

PO-CH/NL/0243



PART A



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MANAGEMENT - IN - CONFIDENCE

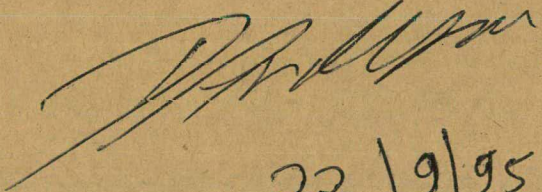
Begins: 22/9/87.  
Ends: 8/12/88.

  
 PO -CH /NL/0243  
  
 PART A

Chancellor's (Lawson) Papers:

CIVIL AND PUBLIC  
SERVANTS ASSOCIATION  
AFFILIATION TO THE  
LABOUR PARTY

Disposal Period: 25 Year

  
22/9/95.

PO -CH /NL/0243  
PART A



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head

CONFIDENTIAL AND  
MANAGEMENT IN CONFIDENCE

*c/* The PMG is holding a meeting on this on Friday and would be grateful for your views

FROM: D A TRUMAN  
DATE: 22 September 1987

1. MR KEMP
2. PAYMASTER GENERAL

views

CE 29/9

PS see also press cutting behind

cc PS/Chancellor  
Sir P Middleton  
Mr FER Butler  
Mr Luce  
Mr Gilhooly  
Mr Pettifer  
Mr Faulkner  
Mr Cropper

### CPSA - AFFILIATION TO THE LABOUR PARTY

This note considers the options which are available to the Government as a response to the CPSA's decision to hold a ballot for affiliation to the Labour Party.

#### Background

2. CPSA members have voted to establish a political fund - a prerequisite to making payments to a political party - which the union hopes will be effective from 1 January 1988. However, the union has yet to sort out check-off arrangements with the Treasury and will run into difficulties if it fails to give us an undertaking (the same as that obtained from the IRSF) that the political fund levies will not be used for party political purposes. The ballot for Labour Party affiliation is expected to be in March or April 1988.

3. In 1983, the CPSA membership voted by 8 to 1 against affiliation, and other union leaders as well as the CPSA's General Secretary expect a similar result in 1988. But the continuing poor state of industrial relations in recent years, made worse by the unions' recent defeat in the 1987 pay dispute, cannot be ignored. In the current soured atmosphere, any Government campaign against political affiliation, particularly if it coincided with a low pay offer next Spring, might persuade the majority, at least in a small turnout, to vote for affiliation. Moreover, the actions of the Militant dominated NEC of the CPSA appear to be deliberately provocative and designed to worsen Civil Service industrial relations for their own ends.



4. The CPSA represent junior administrative staff, typists and secretaries who have little say in policy matters. To that extent it could be argued that political affiliation would make little, if any, difference to the relationship with the employer since many CPSA activists are already involved in the Labour movement. Moreover, there is no sign that other Civil Service unions are interested in affiliation, and it is debatable whether affiliation by the CPSA, with its Militant Tendency dominated national executive, would be welcomed by the Labour Party or, at least, its leadership, which might find the union's policies an embarrassment. There is, however, a strong case for the preservation of the political neutrality and integrity of the Civil Service. Whether a bipartisan approach to such matters is feasible either before or after the ballot is for consideration; it may be possible to induce the opposition parties to acknowledge the necessity for a non-political Civil Service at all levels. Such an acknowledgement would make it easier, for example, to introduce legislation at a later date should that prove necessary.

#### Options

5. The options should be seen against this background. The only sure ways of stopping affiliation are:

(a) taking immediate action to forestall a "yes" vote, which would be highly controversial and politically sensitive; or

(b) announcing that such action will be taken if the membership vote for affiliation and being prepared to do so in that event.

A wholly different option is:

(c) keeping a low profile pending the ballot in anticipation of a re-run of 1983 while preparing one or more contingency moves.



The options for action appear to be:

(i) **Legislation to nullify the effect of reaffiliation.**

There are two broad routes: First, as in the 1927 Trades Disputes and Trade Unions Act, it could be made a condition that civil servants could not belong to a union which had political funds or was affiliated to a political party. Secondly, impose a duty on trade unions generally not to have political objects and/or not to affiliate. If possible it would be desirable to differentiate between general unions with industrial civil servants amongst their members which for years have been affiliated to the Labour Party, and those unions who have in membership non-industrial civil servants. It should be possible to impose such a duty on unions which had some or only civil servants in membership. (Annex A discusses these problems in more detail).

**Comment:**

This option might be effected through a separate section in the forthcoming Employment Bill or through a separate Bill. It is thought likely that the former would require incorporation at the outset rather than as an amendment (assuming that the timing of the ballot coincided with the committee stage of the Bill) because of problems of the Bill's scope; confirmation will depend on the advice of DE lawyers and Parliamentary Counsel). The legislation would be highly contentious politically and might well be in breach of the international law obligation of the UK under the ECHR and/or the ILO conventions. The approach aimed at individuals would be broadly comparable to that adopted over the GCHQ ban with its connotations of human rights and individual freedom. It would be difficult if not impossible to police in the event of widespread disobedience by individual civil servants. Legislation aimed at unions might be less contentious but where the principles of modern industrial relations legislation are followed - ie resting on the commitment efforts would prove difficult to enforce in practice. There are clearly disadvantages in tabling legislation before the ballot which, in the event, may not be needed.



(ii) the suspension of national and departmental recognition, exclusion of CPSA representatives from all Whitley machinery and hence cessation of all facilities.

**Comment:**

This would not require legislation although that is a possible alternative since, subject to legal advice, there might be risks of legal challenge both under domestic and international law which, together with some of the management problems, are considered in Annex B. This step would mean the loss of negotiating rights for some 200,000 civil servants and the implications for Civil Service industrial relations would be very considerable; other Civil Service unions might become involved. It would be politically controversial and raise faint echoes of GCHQ. It would also be legitimate grounds for a trade dispute and probably would be exploited as such. On the other hand, such a step would not be irrevocable and the remedy would lie in the hands of the union members who could vote for disaffiliation. It would also deal with the growing McCreadie/Militant Tendency problem.

(iii) Withdrawal of the check-off facility, either for the political levy or possibly for the entire union subscription.

**Comment:**

The CPSA (both moderates and Militants) are seeking alternatives to the check-off system to make them independent of the employer. The threat, which would need to be backed by another amendment to the Civil Service Code, would not dissuade the Militants, nor would it necessarily have much impact on the outcome of the ballot. But the Government could hardly acquiesce in collecting subscriptions for a purpose to which it has long made its opposition known.



GCHQ



(iv) other possibilities include

(a) withdrawal of facilities under the National Facilities Agreement (NFA).

**Comment:**

This is a National Whitley Agreement made with the CCSU and not just the CPSA. Breaking the Agreement (unless the full 12 months notice were given) would affect all Civil Services unions. The threat of this would mean little to the membership and would be unlikely to influence the vote. It is a possible means of retaliation after the ballot.

(b) persuading the Council of Civil Service Unions to drum up sufficient support from its constituent members to put pressure on the CPSA.

**Comment:**

It is unlikely that the Militants would be willing to accept advice, even if the other union leaders were willing to give this.

**Conclusion**

6. Given the present state of industrial relations, we believe that while Ministers may well wish to make their general attitude to political affiliation clear, any advance warning or specific actions which might be taken, could well be counter-productive. Our preferred option, therefore, is that in paragraph 5(c) - keep a low profile - since there are reasonably good grounds for expecting that the CPSA membership will reject the notion of party affiliation. In the meantime, contingency arrangements should include, at a minimum, draft changes in the Civil Service Code to ensure that check-off cannot be used to pay political levies to parties.



7. If Ministers wish to proceed with more far-reaching measures either immediately or as contingencies, the only effective options are legislation or withdrawal of recognition (5(i) and 5(ii)). Action, pre-emptive or otherwise, which appears to affect the freedom of the individual civil servant, will be politically controversial, affect adversely industrial relations in the Civil Service and may be open to successful legal challenge - if not here then in an international forum. Action against the unions will also be almost as contentious. In particular, both may impinge on our international obligations under the ECHR and ILO, although we believe - subject to legal advice - these problems may be capable of being overcome. Legislation will affect all Civil Service unions, and while it may be legally the safer path of the two, would very much echo the GCHQ affair. It is almost certain to require a separate Bill unless the Government were willing to insert a special section in the new Employment Bill at the outset. This would unbalance it politically and would entail a great deal of controversy which would be unnecessary should the CPSA members reject the notion of affiliation. A decision will be needed urgently since time is now very short if colleagues' agreement is to be obtained and instructions given to the Parliamentary draftsmen before the Bill is tabled next month.

8. Withdrawing recognition has very great management difficulties and legal uncertainties, although there are precedents in both the private and public sectors. This is a course which is preferred by officials in the Department of Employment who believe that it will be somewhat less controversial and politically messy than legislation, but we suspect that many departments would regard this course as objectionable, leaving as it would, some 200,000 staff without representation. It would mean, however, that we were taking action against the specific union in question and not all non-industrial Civil Service unions.



Recommendation

9. If Ministers agree, we recommend that no action should be taken immediately over the question of the CPSA's affiliation to the Labour Party and that we should await the outcome of the ballot. However, officials should prepare for the withdrawal of check-off. Should Ministers agree that, the difficulties notwithstanding, more fundamental solutions are needed, an urgent approach to the Employment Secretary will be necessary if the new Employment Bill is to be used as a vehicle. If further work on a contingency basis only is required, then the timing difficulty does not arise assuming Ministers would be content either to have their own Treasury Bill later - assuming this can be slipped into the legislative programme - or wish to consider further the implications of withdrawing recognition.



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## LEGISLATION

There appear to be two main options if legislation were invoked as a counter to affiliation. But even if primary legislation were used, it should be borne in mind that, whilst such legislation might meet domestic law difficulties, there are international law considerations which need to be analysed carefully.

2. First, a sanction could be applied against the individual civil servant, whereby it would be an offence to belong to any trade union affiliated to a political party. The enactment, or clear threat, of such a provision might have the desired effect of preventing any decision to affiliate by unions subject to democratic control; and the possibility of large-scale defection could help deter union leaders who might otherwise be tempted to ignore their members' views. On the other hand, there could be no guarantee of anything approaching total compliance, and it is difficult to see how the measure could be enforced in the face of defiance by any significant number of civil servants. Further, so draconian a measure would be difficult to defend both domestically and internationally (echoes of GCHQ).

3. Alternatively, less drastic sanctions could be directed at the individual by way of non-penal legislation, eg:-

(i) the imposition on civil servants of an express contractual duty not to belong to politically affiliated unions;

(ii) the promulgation of less favourable conditions of service for civil servants belonging to politically affiliated unions.

Options (i) and (ii) both offer the further alternatives of civil suit and disciplinary action. In practice the consequence could be to prevent or reverse union decisions to affiliate, leaving individual rights untrammelled. However, the impact would be unpredictable, and would depend not only on the reaction of



individual staff but also on the extent to which their unions reflected their wishes. Civil suit could, for determined martyrs, lead through contempt of court to gaol; the ultimate disciplinary sanction would be dismissal. The prospect, even theoretical, of dismissals for belonging to politically affiliated unions could lead to political and industrial reactions, possibly on an even greater scale than was the case with the GCHQ union ban.

4. The second main option would be to require unions with civil servants in membership not to affiliate to a political party. In order to be fully effective this measure would have to cover any union having civil servants in membership. However, it would be desirable to distinguish between industrial and non-industrial civil servants to avoid bringing into the scope of the legislation, such general unions as TGWU and AEW which have long been affiliated to the Labour Party. In order to comply, these bodies would be obliged either to disaffiliate or to expel their civil servant members. It must be anticipated that some, if not all, would attempt to resist.

5. Possible sanctions for affiliation in defiance of a statutory ban range from criminal penalties to withdrawal of privileges. It would be possible to make the union criminally liable and to expose its funds to fines. Alternatively, immunity from actions in tort could be made conditional upon compliance with a ban on affiliation. This would have a number of disadvantages: in the absence of tortious activity, or litigation relating to it, defiance of the ban could continue indefinitely; actions in tort based on industrial action in the Civil Service present certain difficulties, notably with respect to proof of financial loss or damage; and the remedy would be remote from the wrong. The sanction would be more effective, at least for non-Civil Service unions, assuming these were caught by the legislation, if it extended to tort actions arising in any part of the union's activity, not simply the Civil Service, but this would reinforce the objection of remoteness. A further alternative would be to provide by statute for the withdrawal of certain advantages associated with listing or a certificate of independence for



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unions which defied a ban on affiliation; this might extend to a statutory withdrawal of recognition. Certain sanctions of this kind, however, could be applied without statutory backing - see Annex B.



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ANNEX B

**WITHDRAWAL OF RECOGNITION**

Since the statutory right to recognition was abolished by the Employment Act 1980, recognition of a trade union has been at management discretion. The CPSA continues to meet the criteria on which, traditionally, recognition has been granted to Civil Service unions.

2. The question of the nature and scope of the recognition accorded to the CPSA is being considered further. However, it is clear that there are agreements which accord recognition to the CPSA on specific issues (eg the CO/DP agreement). To the extent that agreements, express or implied, are collective agreements, they are not enforceable as a matter of contract unless Section 18 of the TULRA applies. Strictly speaking, therefore, the Government may withdraw recognition at its own discretion. But the question remains subject to further advice from the lawyers. Subject to that advice, the possibility of legal challenge would appear to be limited primarily to the following areas:

**A. Individual rights**

(i) Individuals may have enforceable contractual rights, but this is a matter which needs further consideration. An example might be as follows: given the fact that the letter of appointment sent to all new recruits states that "staff are strongly encouraged to join the appropriate trade union"; this clause might be interpreted as providing a contractual right to belong to a recognised trade union;

(ii) if, in consequence of the Bruce case, the legal position is that there is no contract of employment, the decision unilaterally to withdraw recognition might, nonetheless, constitute an abuse of power if withdrawal amounted to a breach of contract and was unfair;



(iii) withdrawal of recognition might amount to a withdrawal of a benefit or advantage in the GCHQ Case sense. If withdrawal was effected without consultation, this might amount to a denial of individuals' legitimate expectation rights and thus be judicially reviewable;

(iv) if the decision to withdraw were irrational, the decision might be judicially reviewable;

(v) withdrawal might constitute an indirect breach of Article 11 of the ECHR. But the public administration exception in Article 11.2 might avail the Government;

(vi) Article 2 of the ILO Convention (No.87) might be infringed by a withdrawal of recognition.

**B. Union rights**

(i) A union from whom recognition was withdrawn might seek to argue in the courts that it had a right (eg by dint of custom and practice) to be consulted on withdrawal and/or that the Government's decision to withdraw had been taken on irrational or improper grounds;

(ii) there would also be the possibility of an infringement of rights under the ILO.

3. Notwithstanding the above, which principally concerns a decision to withdraw recognition, it may be that the threat of de-recognition could not be successfully challenged in domestic law, though - as already noted - this is an area on which further legal advice must be sought. But it would almost certainly be necessary to consult the union before the decision were taken, and any threat to withdraw must make clear that the Government would not approach the consultation process with a fixed view and a closed mind. Prior announcement that recognition would be withdrawn would aim to dissuade CPSA members from voting in favour



of affiliation. But such warning might prove counter-productive, and the alternative would be to await developments and then, if necessary, announce that subject to appropriate consultation with the CPSA it was the intention to withdraw or suspend recognition. De-recognition would place the burden of decision on the CPSA membership. It would always be possible for the members, if at first they ignored the Government's warning, subsequently to vote for withdrawal of affiliation and thus free the way for renewal of recognition.

4. Withdrawal of recognition would have managerial implications. Management would be required, in order to avoid legal challenge, to open channels for consultation with staff affected if it were proposed to make changes to their terms and conditions of employment. In theory, the facility for staff to make individual representations already exists; in practice, unions act as filters for staff grievances and views, and the prospect of management receiving a host of individual representation is daunting, if perhaps unlikely. Departments might find it very difficult, though not necessarily impossible, to conduct most business on such a basis. It might be for consideration whether other unions might be recognised as representing erstwhile CPSA members.

5. The political consequences may be considerable. In particular, as with the legislative option, the spectre of GCHQ would be raised with accusations that the Government was interfering in the internal democratic affairs of trade unions. But equally, the act of affiliation might suggest an attempt to use the industrial relations forum for mounting politically-inspired opposition to the Government's policies.



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*\* Mr Truman's detailed submission below discusses the options open to the Government faced with the CPSAs stated intention to seek a ballot on a proposal that they should affiliate to the Labour Party.*  
*2. This is a nasty one, and I hope you will be able to find time to discuss it with us. There is also a certain degree of urgency in it, in that if Ministers want to go for Option (a) in Mr Truman's paragraph 5 (taking immediate action to negate the effect of a possible "Yes" vote) then virtually the only effective route is legislation and a suitable vehicle for this would be in Mr Fowler's forthcoming Employment Bill, which the Department of Employment hope to put to bed very shortly now.*  
*3. All the options are very difficult. Doing nothing (Mr Truman's Option (c)) is tempting, given the difficulties of the alternatives and given also the view which is widely held, but which is not cast iron, that left alone the proposal will probably be defeated on ballot. But it does not seem to me that Ministers will find it tolerable just to watch this happen, not just because it might go wrong but also because there is a point of principle here which should not be left to the vagaries of a ballot (especially one run under the less than Queensbury rules*

*C/PMS is having a meeting on this on Friday and would be grateful for your views.*

FROM: E P KEMP  
25 September 1987

PAYMASTER GENERAL

cc PS/Chancellor  
Sir Peter Middleton  
Mr F E R Butler  
Mr Luce  
Mr Gilhooly  
Mr Truman  
Mr Pettifer  
Mr Faulkner  
Mr Cropper

CPSA - AFFILIATION TO THE LABOUR PARTY

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which the CPSA tend to adopt). Doing nothing would also sit uneasily with the last sentence of the statement you made to the House in February 1986, copy attached, to the effect that "..... political affiliation .... would run wholly counter to this need for political neutrality". So while it is certainly an option from many points of view, I do not think I would go along with the recommendation that we should await the outcome of a ballot, unless the objections to other courses make this inevitable.

4. The alternatives, as set out, are to take immediate action to negate the effect of such a ballot, or to announce that appropriate action will be taken if the membership do vote for affiliation. Again I do not much like the second; it could turn effectively into asking CPSA members to choose between their (Militant) leaders and the Government, and also seems a bit weak in that if Ministers feel strongly on this issue - and I am sure they are right so to do - we might as well take the appropriate steps upfront to make clear this stand.

5. So one is forced to the conclusion that from these points of view the best option would be to take action upfront. And if one is going to do this, I think that legislation is the only effective course. The other suggestions that are made such as the suspension of national and Departmental recognition, the withdrawal of the check-off facility, the withdrawal of facilities generally, and persuading other Civil Service unions to put pressure on the CPSA to draw back, all seem to me to be less good, for various reasons. Annex A to Mr Truman's note discusses the legislative route, and sets out clearly the very real difficulties which would have to be analysed further. Essentially the choice is between legislating against individual civil servants or legislating against the organisation, and surely we would have to go for the second case, perhaps by simply making it clear that a Civil Service union (as defined, and that may not be too easy) would if it affiliated to any political party (again, as defined, and again this may not be too easy) would find itself deprived of its privileges and immunities under trade union legislation generally. This would be difficult and pretty dramatic,



but I do not think Parliament and the public, and indeed Civil Service trade unionists generally, would be surprised and the fact that the issue patently arises because of the emergence and activities of Militant is in this context only helpful.

6. I should emphasise again - unnecessarily - that the legislation route would not be an easy one. The Department of Employment are, I gather, deeply unhappy with the idea, especially if their forthcoming Bill is to be used. There would be a lot of difficulty with Mr Fowler, at least if he listens to his officials. But as I say this option must, it seems to me, be seriously considered.

7. As I say you may wish to discuss this with us. An early next step must be a letter from you to Mr Fowler, copied to appropriate Ministers, (including the Prime Minister) setting out your views. I understand the Prime Minister is very much aware of the activities of Militant and the CPSA, and like the rest of us is not a bit happy; and she may well want to discuss it with you and others. A slightly further out possibility - as Mr Truman suggests - might be for Ministers on the political net to try to put together a bipartisan approach to this problem; with Labour leaders apparently keen to eradicate Militant from their supporters, the Opposition might not be averse to joining the Government in helping to bar the door to this new group of volunteers - though I can see that politically this points both ways.

EPK

E P KEMP



Minister of State (Treasury) statement to the House on Friday 7 February 1986

The Minister of State, Treasury (Mr. Peter Brooke): I have been asked to make a statement concerning the position of non-industrial Civil Service trade unions and their possible establishment of political funds.

Political funds are unnecessary unless the Civil Service trade unions are proposing to participate in party political activities or to campaign for or against political parties or candidates. Provided this is not the main purpose of their campaign material or activities, they remain free, like other trade unions, to spend money from their general funds to promote and to defend their members' interests. This was the position before the Trade Union Act 1984 came into force and remains the position now.

If, wholly unexpectedly, unions were to experience difficulties in the courts on challenges that money had been wrongly spent from their general funds of activities to defend or improve their members' terms and conditions of employment, the Government would be ready to contemplate changing the law.

Any union that proposed to establish a political fund would have to consult its members by secret ballot. It is important that, in casting their votes, all union members are fully aware that a fund is not necessary unless party political activities are planned. Union members should know also that the creation of such funds will not be seen as in keeping with the political neutrality of a Civil Service that has to serve Governments of any political persuasion. Moreover, in the Government's view, political affiliation — a further but separate possible step — would run wholly counter to this need for political neutrality.



FROM: D A TRUMAN

DATE: 29 September 1987

1. MR KEMP
2. MR CULPIN

cc PS/Chancellor  
PS/Paymaster General  
Sir Peter Middleton  
Mr F E R Butler  
Mr Luce  
Mr Gilhooly  
Mr Pettifer o/r  
Mr Flitton  
Mr Cropper

#### CPSA - AFFILIATION AND THE LABOUR PARTY

The attached release from the Press Association (A) reports the views of John Ellis, CPSA General Secretary, who was attending the Labour Party Conference as an observer, that should his union vote in favour of affiliation to the Labour Party, the Government would then bring in legislation to prevent this from happening. This is a personal view of John Ellis which he has repeated to me more than once. He has two objectives. First, he believes his union will not affiliate and he hopes that his warnings will not be lost on his membership. Secondly, and more immediately important from his own point of view, he is trying to push his union into withdrawing from the check-off system for all subscriptions and to go over to direct debit so that the CPSA is no longer dependent upon the employer for the collection of its funds. Much of his statement to the press was clearly part of this campaign.

2. The main issue for the Government is the possibility of political affiliation. Whether the CPSA is likely to reverse the 1983 vote - see attached press cuttings (C) - is a matter for speculation but many in the union movement believe affiliation is unlikely. But while the possibility is there, the Government would have to consider what steps to take. If the press make further enquiries, the Government's attitude was clearly set out in the statement made to the House of Commons on 7 February 1986 by the Paymaster General (then Minister of State) at the time when the Inland Revenue Staff Federation was setting up its political fund. (See attachment B.) The line to take is:

"The Civil Service has to serve Governments of all parties and hence should be and be seen to be politically neutral. The Government made its position clear in its statement on 7 February 1986. Affiliation by a non-



industrial civil service union to a political party would not be seen as in keeping with the traditional political neutrality of the Civil Service. Mr Ellis's views are his own but ~~in the event of a ballot in favour of political affiliation, the Government would have to consider the options open to it of which legislation would be one possibility.~~"  
of the options open to the Government, legislation would be one possibility."



D A TRUMAN



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LABOUR

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CLAPDOWN ON CIVIL SERVICE UNIONS  
FEARED

The Government may introduce legislation to stop civil service unions affiliating to the Labour Party, it was claimed today.

Whitehall's biggest union, the Civil and Public Services Association, is due to ballot its members in March and April next year on affiliation to the Party.

Mr John Ellis, CPSA general secretary, attending the Labour Party Conference in Brighton as an observer, said today: "If we obtain a 'yes' vote, it would not surprise me if the

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PRESS ASSOCIATION 121016000a

UK FILE Cont. 2 29-09-87 at 04:57

Government then decided to legislate to prevent civil service trade unions from affiliating to the Labour Party.

"They will do anything to keep us under their thumb" he said.

However, Mr Ellis doubted whether the Government would go so far as to ban trade union membership altogether within the civil service as they did at GCHQ Communications Centre at Cheltenham.

"I do NOT think they will see that as either necessary or politically credible", said Mr Ellis.

His fears were based on the way the Government had behaved so far over the collection of union dues by automatic

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deductions from pay packets.

As soon as the unions did something the Government did NOT like by way of industrial action, the collection of subscriptions was stopped.

"That is immoral and a blackmail", said Mr Ellis. "Any Government that can take that kind of action will stop at nothing to prevent us affiliating to the Labour Party".

Mr Ellis wanted to see the "check off" system of collecting union subscriptions ended because it denied the union independence.

He wants union subscriptions collected directly from the membership.

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PRESS ASSOCIATION 121016002a

UK FILE Cont. 4 29-09-87 at 04:57

"In that way, if there is a yes vote for affiliation to the Labour Party, the Government cannot stop us collecting the political levy without passing legislation to deny civil service trade unions from having a political fund".

The view in Government circles is that civil service trade unions should NOT indulge in politics since their members have to service Governments of all political colours.

The last time the government used legislative power to force civil service unions to disaffiliate from the TUC and Labour Party was in 1926 - a law which was later repealed.

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PRESS ASSOCIATION 121016003a

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The CPSA last balloted its membership on affiliation to the Labour Party in 1983, when it was rejected by a two to one majority.

The union, now under Militant Tendency domination, is expected to vote in favour of affiliation to the Labour Party next year, and would become the first civil service union to do so since the ban was lifted.  
end to



B

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TIMES 10.11.83

C.14

## CPSA 'No' to Labour affiliation

Lower-paid civil servants have voted by a margin of two to one against affiliating their union to the Labour Party in a ballot that points to trouble ahead for Mr Neil Kinnock, the part leader.

In a 51 per cent poll, members of the Civil and Public Services Association (CPSA) voted 65,922 against reaffiliation and 31,479 in favour, a majority of just under 67.5 per cent against the political recommendation of the union's national executive.

Mr Alistair Graham, general secretary of the CPSA and an active member of the Labour Party, said: "It is a much better result than we expected, and it should give heart to those trade unions already affiliated that are going to face political fund ballots under government legislation. You can get substantial support for affiliation to the Labour Party."

Under the Trade Union Bill now going through Parliament, unions will be compelled to hold a vote on the continuation of their political fund before the middle of 1985; labour movement sources fear that up to 15 unions could be obliged to sever their links with the party.

Unions whose political funds are most at risk are thought to be those with large white-collar and women memberships. Under that heading are included the shop workers' union, USDAW; the clerical union, Apex; Mr Clive Jenkins's union, ASTMS; and some craft unions.

The CPSA first voted to join the Labour Party in 1918; last month's £50,000 ballot is unlikely to be repeated for at least five years.

GUARDIAN  
10.11.83

## Loyalty to Labour in union vote

THE membership of the Civil and Public Services' Association has voted against affiliation to the Labour Party by a 2-1 majority, much smaller than was generally expected, writes Keith Harper.

The ballot, announced yesterday, showed that on a 51 per cent poll of the membership, 65,922 (67 per cent) voted against affiliation while 31,479 (32 per cent) were in favour.



FROM: E P KEMP  
29 September 1987

PS/PAYMASTER GENERAL

cc PS/Chancellor  
Sir Peter Middleton  
Mr F E R Butler  
Mr Luce  
Mr Gilhooly  
Mr Truman  
Mr Pettifer  
Mr Faulkner  
Mr Cropper

CPSA

My note of 25 September. I dare say you saw this in today's Times.

pp E P KEMP

THE TIMES

### Small cheer

Constituency delegates at the conference yesterday applauded to the echo a speaker who called for his union, the Civil and Public Servants Association, to affiliate to the Labour Party. There was a distinct lack of applause from the platform, however. The majority on the national executive want closer ties with the CPSA's Militant-dominated leadership like they want the proverbial hole in the head. They are, I understand, waiting for the Militant spasm to pass before welcoming the CPSA - which is about to ballot its 140,000 members on the issue - into Labour's already broad church.

PHS



CONFIDENTIAL  
MANAGEMENT IN CONFIDENCEFROM: J M G TAYLOR  
DATE: 2 October 1987

PS/PAYMASTER GENERAL

cc Sir P Middleton  
Mr F E R Butler  
Mr E P Kemp  
Mr Luce  
Mr Gilhooly  
Mr Truman  
Mr Pettifer  
Mr Faulkner  
Mr Cropper

## CPSA - AFFILIATION TO THE LABOUR PARTY

The Chancellor has seen Mr Kemp's minute of 25 September, and Mr Truman's minute of 22 September.

2. The Chancellor agrees that we must take action "up front". The practical choice seems to him to be between Mr Truman's option (i) - the legislative route (where the 1927 model looks the best bet) - and option (ii), the toughest non-legislative route (which, pace Mr Truman's comment, does not bear any serious resemblance to GCHQ).

25

J M G TAYLOR



CONFIDENTIAL  
MANAGEMENT IN CONFIDENCE



The PMG wishes to discuss this with you at Prayers

M

CE 5/10

*Discuss  
at Prayers*

NOTE OF A MEETING HELD AT 4.00pm ON FRIDAY 2 OCTOBER AT HM TREASURY

Present:

Paymaster General  
Mr F E R Butler  
Mr Kemp  
Mr Luce  
Mr Truman  
Mr Gilhooly  
Mr Pettifer  
Mr Tyrie

PS/Chancellor

cc PMG  
Mr Tyrie

Draft minutes of Friday's meeting - PMG will discuss at Prayers.

5/10

CPSA - AFFILIATION TO THE LABOUR PARTY

1. Papers: Mr Truman (22 September), Mr Kemp (25 September) and PS/Chancellor (2 October).

2. The Paymaster General said he shared the Chancellor's view that the Government should take action now, or indicate publicly now what action would be taken if the ballot favoured affiliation. The following problems with such a course were mentioned:

(i) There was very little time left to get a provision into Mr Fowler's Employment Bill;

(ii) The favoured legislative route - removing unions' immunity from tort actions (Annex A, paragraph 5 of Mr Truman's note) would only penalise an affiliated Union if it went on strike. It would not stop affiliation per se. An announcement beforehand could affect the ballot either way;

(iii) Officials only had a preliminary view of the legal situation - things had moved on since 1927. There were some "private sector" unions containing civil servants (eg the TGWU), and there were some "civil service" unions which contained private sector workers (eg traffic controllers in the IPCS). This would complicate the legislation;



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**MANAGEMENT IN CONFIDENCE**

(iv) It was important to ensure that any domestically legal solutions did not fall foul of the ECHR or international law; and

(v) Withdrawal of immunity would have to be accompanied by withdrawal of recognition. The Treasury could be in the position of not having anyone to represent a substantial number of employees - although people would transfer, and hours of negotiation had not prevented the imposition of this year's award!

3. Mr F E R Butler thought that the Government could not avoid making clear now that:

(i) Unions had the right to ballot their members on affiliation; but

(ii) it would be wrong for politically neutral Civil Servants, responsible for advising Ministers on policy, to affiliate - not least because of the risk of politically motivated industrial action; and so

(iii) the Government would take firm action if they did.

It was important to make it very clear that this policy did not apply to industrial civil servants, teachers, NHS workers and local authority staff. He thought the Government's position would appear reasonable to Parliament and the public.

4. Mr Tyrie thought there was no chance of getting the official Opposition on the Government's side. The Paymaster General was less sure. Mr F E R Butler thought they might not be too obstructive in the House. Mr Kemp added that the moderate Union leaders were horrified by the CPSA's action, and would advise the Government to wait until they lost the ballot, and not take precipitate action. But they understood the arguments against the Government abdicating responsibility in this way.



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**MANAGEMENT IN CONFIDENCE**

**CONCLUSIONS**

5. The Paymaster General agreed that the best course of action if the CPSA affiliated to the Labour Party would be to:

- (a) withdraw recognition;
- (b) remove their immunity from tort.

The legislation needed for the latter could be either:

- (i) included in Mr Fowler's Bill;
- (ii) a separate Bill, probably covering the Bruce issue as well, to be enacted before April (and thus to be introduced around Christmas); or
- (iii) as (ii), but to be introduced after a ballot in favour.

In order to keep the first option open, he agreed that officials should ask the Treasury Solicitor, in consultation with other Departmental lawyers and the Law Officers, to investigate the issues and prepare draft instructions to Counsel, contingent on a political decision by Ministers.

6. Mr Luce pointed out that it would be difficult to secure agreement for a slot for an emergency Bill (option (ii)) if everyone agreed that the ballot was likely to fail. Although the CPSA could adjust the timing of its ballot and the actual affiliation to cause the Government maximum legislative difficulty, Mr Kemp thought the reality of the forthcoming executive elections would force them to act as quickly as possible.

7. The Paymaster General said that he would discuss with Mr Fowler in Blackpool whether he could take this clause in his Bill - to be published on 22 October. He would offer to support



**CONFIDENTIAL**  
**MANAGEMENT IN CONFIDENCE**

him in piloting this clause through Committee, and point out that the business managers would doubtless prefer an extra clause in the Employment Bill to an emergency Bill (which would probably also cover Bruce and would be solely the responsibility of Treasury Ministers). (Mr Truman agreed to provide an aid<sup>e</sup>memoire). The Paymaster might then want to write to colleagues, and consider how to inform the CCSU.

8. The Paymaster will discuss this with the Chancellor.

S P JUDGE  
Private Secretary  
NM87/255



*I agree - this would be a serious development if it came about with a stop, the odds must still be against my side political affiliation. The men tomorrow. J/S*

FROM: J PETTIFER  
DATE: 3 September 1987

- 1. MR TRUMAN
- 2. PAYMASTER GENERAL

- cc Chancellor
- Chief Secretary
- Financial Secretary
- Economic Secretary
- Sir P Middleton
- Mr F E R Butler
- Mr Kemp
- Mr Luce
- Mr Graham
- Mr Flitton



*Part of Affairs is unacceptable. Cony - Plans won have to be prepared carefully.*

- Minister of State
- Privy Council Office
- Miss Mueller
- Mr Harris
- Mr Davie

**CPSA: REAFFILIATION TO LABOUR PARTY**

Unofficial word has reached us that the CPSA Executive voted yesterday in favour of reaffiliation to the Labour Party, and that the union's membership are to be balloted on this next year. This follows a vote earlier this year by CPSA members in favour of setting up a political fund. The term "reaffiliation" is appropriate because the union was affiliated to the Labour Party from 1920 to 1927, but the affiliation was terminated in order to comply with a provision of the Trade Disputes and Trade Unions Act 1927. This Act was repealed in 1946.

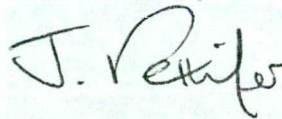
2. It has long been the wish of Left-Wing activists within the CPSA to affiliate to the Labour Party, and motions urging affiliation have appeared fairly regularly on CPSA conference agendas since 1946. Until recently it seemed likely that moderate CPSA leadership would keep the union away from such a course, which could result in disaffection of a significant proportion of the membership. However, the union's Executive Committee has now swung firmly to the Left and the more extreme view has prevailed.



3. At this early stage, and bearing in mind the mercurial nature of internal CPSA politics, it is impossible to say how the ballot will go if indeed it takes place. So for the time being it is arguable that we should take no action and simply adopt a "wait and see" approach. But a vote in favour of affiliation would be a very serious matter because it would undermine the tradition of political neutrality in the Civil Service, and the Government would almost certainly want to reconsider its attitude towards the Civil Service unions. It is probable that affiliation could only be prevented by passing appropriate legislation.

4. The Paymaster General may like to be reminded of the statement he made in the House last year (as Minister of State) about the position of non-industrial Civil Service unions vis à vis political funds and political affiliation, a copy of which is attached. As already indicated, since that statement was made the CPSA have voted to set up a political fund, and have thus become the second non-industrial Civil Service union to do so (the IRSF were the first). The CPSA have been in touch with us about the practicalities of their members subscribing to the fund via the existing check-off arrangements (this facility having already been agreed for the IRSF), but as yet this has not progressed beyond the considerative stage.

5. We have been in touch with the Press Office, who are suitably briefed.



J PETTIFER  
IRD



Minister of State (Treasury) statement to the House on Friday 7 February 1986

The Minister of State, Treasury (Mr. Peter Brooke): I have been asked to make a statement concerning the position of non-industrial Civil Service trade unions and their possible establishment of political funds.

Political funds are unnecessary unless the Civil Service trade unions are proposing to participate in party political activities or to campaign for or against political parties or candidates. Provided this is not the main purpose of their campaign material or activities, they remain free, like other trade unions, to spend money from their general funds to promote and to defend their members' interests. This was the position before the Trade Union Act 1984 came into force and remains the position now.

If, wholly unexpectedly, unions were to experience difficulties in the courts on challenges that money had been wrongly spent from their general funds of activities to defend or improve their members' terms and conditions of employment, the Government would be ready to contemplate changing the law.

Any union that proposed to establish a political fund would have to consult its members by secret ballot. It is important that, in casting their votes, all union members are fully aware that a fund is not necessary unless party political activities are planned. Union members should know also that the creation of such funds will not be seen as in keeping with the political neutrality of a Civil Service that has to serve Governments of any political persuasion. Moreover, in the Government's view, political affiliation—a further but separate possible step—would run wholly counter to this need for political neutrality.





FROM: CATHY RYDING

DATE: 4 September 1987

PS/PAYMASTER GENERAL

cc Chief Secretary  
Financial Secretary  
Economic Secretary  
Sir P Middleton  
Mr F E R Butler  
Mr Kemp  
Mr Luce  
Mr Truman  
Mr Graham  
Mr Pettifer  
Mr Flitton  
Minister of State, Privy  
Council Office  
Miss Mueller  
Mr Harris  
Mr Davie

**CPSA: REAFFILIATION TO LABOUR PARTY**

The Chancellor has seen Mr Pettifer's minute to the Paymaster General of 3 September.

2. The Chancellor has commented that party political affiliation is unacceptable, and contingency plans will need to be prepared accordingly.

*CR*

CATHY RYDING



9/ I understand you asked two  
questions at Prayer this  
morning. Those are covered in  
(ii) and (v) below. See also  
the PMG's letter to Mr Fowler below.

See also Annex D  
flagged.

Thank you

CR 12/10

NP



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FROM: S P JUDGE  
DATE: 12 October 1987

MR KEMP

cc PS/Chancellor  
PS/Chief Secretary  
Sir Peter Middleton  
Mr F E R Butler  
Mr Anson  
Mr Luce  
Mr Gilhooly  
Mr Truman - or  
Mr Pettifer  
Mr Faulkner  
Mr Tyrie  
Mr Collins - T.Sol  
Miss Mueller - OMCS  
Mr Court - OMCS

CIVIL SERVICE CONTRACTS ETC

The Paymaster General was most grateful for your submission of 8 October, and associated papers (\*). The Paymaster General:

- shirley  
you  
11/10/87
- i. is content with the draft letter for Sir Robert Armstrong to send to the CCSU;
  - ii. is content for the Bruce legislation to take immediate effect once Royal Assent is received. Mr Pettifer kindly explained to me that the required procedures mentioned in Mr Truman's submission are set out in the Cabinet Office's guide to legislative procedures, rather than Erskine May;
  - iii. notes the press reports in Friday's Guardian that the CPSA have voted heavily against industrial action over ethnic monitoring;
  - iv. has sent the attached letter to Mr Fowler, noting that their conversation in Blackpool was as Mr Truman predicted;
  - v. notes that the preliminary view of the (international) legal risks of taking the 1927 route is shared by Treasury and Employment officials and Treasury Solicitor, although formal advice has not yet been taken (or the FCO consulted).

S P JUDGE  
Private Secretary

- \* Mr Truman (7 October) - "Civil Service contracts, Bruce case et al"  
Mr Truman (9 October) - "Employment Bill - Bruce case"  
Mr Truman (7 October) - "Industrial action by CPSA members in Job Centres"



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Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Norman Fowler MP  
Secretary of State  
Department of Employment  
Caxton House  
Tothill Street  
LONDON SW1H 9NF

12 October 1987

Dear Norman,

**CPSA AND POLITICAL AFFILIATION**

We had a brief word at Blackpool about the apparent intention of the Civil and Public Services Association (CPSA) to ballot its members on affiliation to the Labour Party. I am sorry we must have missed each other over the weekend.

I have of course already made clear, in my statement to the House on 7 February 1986, the Government's attitude on the question of political funds for Civil Service unions, and our concern about the possibility of political affiliation. The Chancellor and I take the view that in present circumstances, and given the way the CPSA are carrying on, the Government should state its position on the issue now, rather than hope that as in 1983 the CPSA membership will reject affiliation without our views being openly expressed.

If, however, we are now to restate our view that it would be wrong for a union representing politically neutral non-industrial civil servants, responsible for advising Ministers, to affiliate to any political party, we have to:

- a. make clear what action we should take if they did; and
- b. be ready to take this action immediately affiliation took place.

We would also have to make it clear that our view did not apply to industrial civil servants, teachers, NHS workers etc.



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There are only two options which might bite:

- i. the immediate suspension of recognition alone; and
- ii. the immediate suspension of recognition, coupled with immediate removal of immunities from actions under tort - under legislation in place and ready to use.

On the former, I understand that if we acted with propriety we could probably withdraw recognition with little risk of legal repercussions. But this does not seem to me to be sufficient. Although the union would cease to be able to conduct business on behalf of its members, or enjoy facilities (we would of course instantly cease check-off, which would starve them of funds quickly), it could still function, it would be able legitimately to instigate strikes, to carry them through with immunity (no doubt doing so over the recognition in itself) and above all to continue to be a trade union affiliated to the political party of its choice.

The Chancellor and I are therefore firmly of the view, notwithstanding the very real difficulties, that we should go for the threat of suspension of recognition, coupled with legislation which removed immunities. This legislation would provide for sanctions against unions representing non-industrial civil servants which affiliated politically. These sanctions might include loss of recognition, loss of immunities from actions in tort, and the removal of any listing or certificate of independence by the Certification Officer, and any associated advantages. I recognise that there are problems here, not least because many so-called Civil Service unions now have members outside the Civil Service - and we should have to look at any possible problems with the ILO and the ECHR. My officials have been discussing these matters with yours, together with our legal advisers.

I should add that there is in theory an alternative, precedented in the Trade Disputes and Trade Union Act 1927 (repealed in 1946) which stopped individual civil servants from belonging to any union affiliated to a political party or organisation. But I think that route lies too close to the GCHQ case for comfort, and I am advised that we would run an even greater risk of falling foul of our obligations under the ILO and the ECHR. There is also the practical question - the mind boggles at the prospect of trying to impose sanctions on each of the 150,000 odd individuals who at present belong to the CPSA. So I think we are forced into contemplating action against the union itself.

There remains the question of finding an appropriate vehicle. On the fact of it your forthcoming Employment Bill looks very suitable, though I recognise that this could give you timing problems. If your Bill cannot be used, then we may have to find or create some other vehicle. But I would be glad to know first whether you and colleagues agree that, in the circumstances, we should be going for the firm prospect of suspension of recognition, coupled with removal of immunities by legislative



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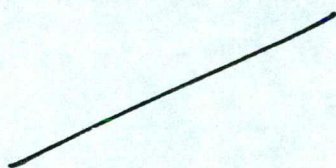
means. I am sure that Parliament and the public would expect nothing less.

I am sending copies of this letter to the Prime Minister, Willie Whitelaw, Geoffrey Howe, George Younger, John Moore, John Wakeham, Patrick Mayhew, Kenny Cameron, David Waddington, Richard Luce and Sir Robert Armstrong. I would be grateful for early comments.

*Luce*

*Pm*

PETER BROOKE





CONFIDENTIAL



FROM: S P JUDGE  
DATE: 15 October 1987

MR KEMP

cc PS/Chancellor  
PS/Chief Secretary  
Sir Peter Middleton  
Mr F E R Butler  
Mr Anson  
Mr Luce  
Mr Gilhooly  
Mr Truman - or  
Mr Pettifer  
Mr Faulkner  
Mr Tyrie  
Mr Collins - T.Sol  
Miss Mueller - OMCS  
Mr Court - OMCS

**CPSA AND POLITICAL AFFILIATION**

The Paymaster General discussed his letter of 12 October with Mr Fowler this afternoon.

2. Mr Fowler said that it was not possible to get policy clearance for the clause the Paymaster proposed in time to get the Bill to L Committee next Wednesday. In any case he had a grave concern about the course the Paymaster proposed: it was not immediately apparent to him that it would secure the desired objectives. He thought there were other, non-legislative, routes available.
3. Having said that, Mr Fowler said he was frankly certain that the provision could if necessary be added as a new Clause. As far as DE could judge, the scope of the Bill would permit this.
4. The Paymaster agreed with Mr Fowler's suggestion that they meet soon to discuss alternative options, and see if an agreed position could be reached. We will be in touch to arrange this.

S P JUDGE  
PS/Paymaster General



M



PRIVY COUNCIL OFFICE

PAYMASTER GENERAL'S OFFICE

WHITEHALL, LONDON SW1A 2AT

16 OCT 1987

15 October 1987

MR KEMP

MR ANSON

MS MUELLER (OMCS)

PS/CHANCELLOR

MR LUCE

MR COURT (OMCS)

PS/CST

MR GILHOOLY

PMG

SIR P MIDDLTON

MR TRUMAN - OR

MR FER BUTLER

MR PETTIFER

MR FAULKNER

MR COLLINS - T.SOL.

Dear Peter

## CPSA AND POLITICAL AFFILIATION

Thank you for sending me a copy of your letter of 12 October to Norman Fowler about the appropriate Government response to the CPSA's apparent intention of balloting its members on affiliation to the Labour Party.

I am happy to leave consideration of the merits of your proposals to those with direct responsibility but I am concerned at the possible consequences for the legislative programme of some of your proposals. I am sure I do not need to emphasise the exceptional weight of this Session's programme to which we are already having to contemplate several unwelcome but unavoidable additions such as action on firearms. I hope very much therefore that you will be able to arrive at a solution which does not require any legislation this Session. If, however, on further deliberation you feel that legislation is absolutely necessary, then I would be grateful if you would put a specific proposition to QL. Needless to say, if we accepted that you had a good case for the provision, we would look to means of minimising the impact on the programme. This would militate against a free-standing Bill and the only suitable existing vehicle would seem to be Norman Fowler's Employment Bill. If you do decide to press this point it would therefore be helpful for QL to have Norman's views on the practicability and desirability of this course.

I am sending a copy of this letter to the Prime Minister, the Secretaries of State for Foreign and Commonwealth Affairs, Defence, Employment, and Social Services, the Lord Privy Seal, the Attorney General, the Lord Advocate, the Chief Whip, the Minister of State, Privy Council Office (Mr Luce), and Sir Robert Armstrong.

The Hon Peter Brooke MP



- PMG 119 OCT 1987 - 10

CONFIDENTIAL



ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

01 X405 2641 X Etn  
01-936-6201

The Hon Peter Brooke MP  
Paymaster General  
Treasury Chambers  
Parliament Street  
LONDON S W 1

PAYMASTER GENERAL

REC.	19 OCT 1987
ACD.	MR KEMP
	PS/CH/EX
	PS/CST
	Sir P Middleton
	Mr FER BUTLER

- 16 October 1987
- Mr Anson
  - Mr Luce
  - Mr Cillhoodley
  - Mr Truman
  - Mr Pettifer
  - Mr Faulkner
  - Mr Collins - T.S.O.
  - Ms Mueller (Comcs)
  - Mr Cart (Comcs)
- PMG

Dear Paymaster General,

CPSA AND POLITICAL AFFILIATION

Thank you for copying to me your letter of 12 October to Norman Fowler setting out your proposals for measures which might be taken against the Civil and Public Services Association in the event that its membership opts for affiliation to the Labour Party.

I note that you have already received advice that the detail of the measures proposed will require careful examination to ensure that they are consistent with our Treaty obligations and I understand that further consideration is to be given to this when the proposals have been worked up into a sufficiently elaborate form.

I am, however, anxious that the risk of judicial review should not be overlooked in relation to the proposal that recognition of the CPSA should be withdrawn. It would be difficult for the Government to argue, with any realistic prospect of success, that in removing such recognition it is merely acting in its role as an employer so that its actions are not therefore susceptible to challenge at public law. Such a contention would be particularly difficult to sustain in the face of the Government's express justification for its measures on the ground that it is seeking to uphold the public's interest in maintaining the political neutrality of its civil service. Indeed that line will itself bring difficulties when deployed in relation to the CPSA which represents members of the clerical and secretarial grades who are in the 'politically free' group and have little or no responsibility for advising Ministers.

In my view, as presently formulated, the measures proposed carry a risk of judicial review on the ground that the Government is acting irrationally by

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taking measures against the CPSA which are out of all proportion to the threat to civil service neutrality posed by their affiliation to the Labour Party. In view of this I consider that there should be no agreement in principle to the proposals until they have been worked up in sufficient detail to enable the legal implications in relation to our Treaty obligations and the risks of a successful challenge by judicial review to be properly assessed.

I am sending copies of this letter to the Prime Minister, Willie Whitelaw, Geoffrey Howe, George Younger, John Wakeham, Norman Fowler, Kenny Cameron, David Waddington, Richard Luce and Sir Robert Armstrong.

Yours sincerely,  
Chris Newell

(APPROVED BY THE ATTORNEY GENERAL  
AND SIGNED IN HIS ABSENCE)



EM9 23 OCT 1987 - 10



RP

MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000  
DIRECT DIALLING 01-218 2112

MO 5/24E

22 October 1987

PAYMASTER GENERAL	
REC	23 OCT 1987
ACTION	Mr Kemp
	PSI chlex
	PSI CST
	Sir P Middleton
	Mr FOR BUTLER

- Mr Anson
- Mr Luce
- Mr Cillhooker
- Mr Truman
- Mr Pettifer
- Mr Faulkner
- Mr Collins

Dear Peter,

CPSA AND POLITICAL AFFILIATION

You asked for early reactions to the proposals in your letter of 12th October to Norman Fowler.

Whilst I do not disagree with the course of action recommended by the Chancellor and yourself, and indeed I think many CPSA members might well accept it, I believe we should be mindful of the degree of disenchantment that currently exists in the Civil Service. This relates not just to pay, but to employer-employee relations generally, and your proposals will need to be put across to the workforce very carefully and persuasively if they are not to have a further negative effect which the TU side will be quick to exploit.

Yours sincerely,

George Younger  
 Ms Mueller (om)  
 Mr Cart (omcs)  
 PNC

The Hon Peter Brooke MP



CONFIDENTIAL

**CABINET OFFICE**  
**OFFICE of the MINISTER**  
**for the CIVIL SERVICE**

*no*

The Minister of State  
Privy Council Office  
The Rt. Hon. Richard Luce MP

Horse Guards Road  
London SW1P 3AL

Telephone: (01)-270 5929

C87/4407

The Rt Hon Peter Brook MP  
The Pay Master General  
Treasury Chambers  
Parliament Street  
LONDON SW1P 3AG

PAYMASTER GENERAL
23 OCT 1987
MR KEMP
PS/CHANCELLOR
PS/CST
SIR P MIDDLETON
MR FER BUTLER
MR ANSON

- MR LUCE
- MR GILHOOLY
- MR TRUMAN
- MR PETTIFER
- MR FALKNER
- 23 October 1987
- MR TYRRE
- MR COLLINS - T.SOL.
- MISS MUELLER - OMCS
- MR COVAT - "
- PMS

*Dear Minister,*

**CPSA AND POLITICAL AFFILIATION**

Thank you for copying to me your letter of 12 October to Norman Fowler setting out possible measures which might be taken against the CPSA if its members decided to affiliate to the Labour Party.

My overriding concern must be the preservation of the political neutrality of the Civil Service and I therefore strongly support the principle of your proposals. Willie Whitelaw has however commented about possible legislative programme problems and Patrick Mayhew has identified potential difficulties in relation to our Treaty obligations and the risk of a successful challenge by judicial review. I feel that I must also draw attention to another probable area of difficulty which should be taken into account.

If the action you propose were to be taken against the CPSA, it might not be readily understood or accepted by the CPSA's membership of junior civil servants who are, with certain exceptions, likely to be allowed if they wished to engage in political activities. The consequential adverse reaction in industrial relations terms could be considerable. There are a number of areas of personnel management, such as the recent review of early retirement arrangements, where the co-operation of the Trade Unions plays a useful part and where its withdrawal, as a likely reaction to punitive measures against the CPSA, would undermine our efforts and be harmful to the implementation of policies. Plans for future initiatives could also be affected.

In those circumstances, I support the view that there should be no firm decisions about your proposals until we are quite clear about their detail and all the implications if they were to be implemented.

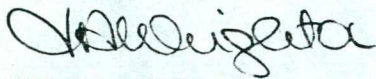
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CONFIDENTIAL

I am sending copies of this letter to the Prime Minister, Willie Whitelaw, Geoffrey Howe, George Younger, John Moore, John Wakeham, Patrick Mayhew, Kenny Cameron, David Waddington and Sir Robert Armstrong.

Yours sincerely



RICHARD LUCE  
(approved by the Minister  
and signed on his behalf)

CONFIDENTIAL



CONFIDENTIAL

BP



Foreign and Commonwealth Office

London SW1A 2AH

PAYMASTER GENERAL
REC 28 OCT 1987
ACTION MR KEMP
PS/CHANCELLOR
PS/CST
SIR P MIDDLETON
MR FOR BUTLER

From the Secretary of State

27 October 1987

*Down Peter*

MR ANDSON	MR TYRIB
MR LUCE	MR COLLINS - T-JOL
MR GILHOULT	MISS MUELLER - OMCS
MR TRUMAN	MR COURT - "
MR FAVKINOR	PLS

Thank you for sending me a copy of your letter of 12 October to Norman Fowler in which you sought colleagues' views on possible action which might be taken on the CPSA's intention to ballot members on the question of affiliation to the Labour Party.

Only a small proportion of CPSA members is employed in the FCO. On the whole they are not militant and we believe many of them are opposed to the policies of the CPSA's National Executive Committee. The FCO is therefore unlikely to be immediately affected by a dispute between the Government and the CPSA leadership on this issue.

However, the key judgement must be what action would most encourage or discourage a sensible ballot. A further no doubt celebrated "rights" cause for the militants would not be helpful in this respect. While withdrawal of recognition could be easily explained, "punitive" legislation would all too easily be exploited as "another attack on the few remaining rights of Trade Unions".

I have noted the Attorney General's concerns on the legal implications of your proposals. I note too that your officials will be considering possible problems with the ILO and ECHR. Although we were able successfully to defend our action at GCHQ on the grounds of national security, we might have much more difficulty in defending

The Hon Peter Brooke MP

CONFIDENTIAL



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withdrawal of recognition of a union for what might be seen as largely political reasons.

I agree with you and Nigel Lawson that if the CPSA go for a ballot on the issue then the Government's position should be restated. But I believe that any statement should be presented in a persuasive manner, emphasising that civil servants are in a unique position so far as neutrality in political affiliation is concerned. I suggest we should avoid any action which might antagonise moderate members of the CPSA and other unions and perhaps play into the hands of the extremists on the CPSA National Executive Committee.

I am copying this letter to the recipients of yours.

A handwritten signature in black ink, appearing to read 'Geoffrey Howe', is written over a horizontal line. There are additional scribbles and lines above and below the signature.

GEOFFREY HOWE

CONFIDENTIAL



ND Papers P50



PMS/28 Oct 1987 -9

DEPARTMENT OF HEALTH AND SOCIAL SECURITY  
Alexander Fleming House, Elephant & Castle, London SE1 6BY  
Telephone 01-407 5522

From the Secretary of State for Social Services

Manley's actual;  
& among...

The Hon Peter Brooke MP  
Paymaster General  
HM Treasury  
Treasury Chambers  
Parliament Street  
LONDON  
SW1P 3AG

PAYMASTER GENERAL  
28 October 1987  
MR KEMP  
1st CHANCELLOR  
B/CST  
SIR P MIDDLETON  
MR FER BUTLER

27 October 1987  
MR ANSON  
MR LUCE  
MR GILHOOLY  
MR TRUMAN  
MR FALKNER  
MR TYRIB  
MR COLLINS - T.S.  
MISS MUELLER - JMS  
MR COURT - "  
PMS

*De Rie*

CPSA AND POLITICAL AFFILIATION

I share the concerns expressed in your letter of 12 October regarding the possible political affiliation of the CPSA to the Labour Party, but I am not entirely happy with the course you propose.

There can be no question about the need to preserve the political neutrality of the Civil Service. But there are, as you say, considerable difficulties about taking the path which you indicate. Nicholas Lyell, in his letter of 16 October, has added the risk of judicial review. I believe we must be certain of our legal ground, and of how we would weather the inevitable industrial relations storms, before we commit ourselves to suspending recognition and legislating to remove immunities. I do not get the impression that these things have yet been thought through.

In any case, I should be against acting - or talking of acting - before the CPSA ballot. I doubt if we should be able effectively to influence the members of the CPSA to vote as we should prefer. Indeed, we might provoke them into the opposite course. I think the better policy would be to allow CPSA members to vote on affiliation without applying pressure. That would give us time to assess more precisely the legal and other consequences of the options open to us if indeed they vote for it.

I am copying this letter to the Prime Minister, Willie Whitelaw, Geoffrey Howe, George Younger, Norman Fowler, John Wakeham, Patrick Mayhew, Kenny Cameron, David Waddington, Richard Luce and Sir Robert Armstrong.

*John Moore*  
JOHN MOORE



FROM: D A TRUMAN

DATE: 29 October 1987

MR FLITTON - IDT

cc PS/Chancellor  
PS/Chief Secretary  
PS/Paymaster General  
Sir Peter Middleton  
Mr F E R Butler  
Mr Anson  
Mr Kemp  
Mr Luce  
Mr Gilhooly  
Mr Graham  
Mr Pettifer  
Mr Faulkner

**CPSA**

Today's Times carries an article on the continuing internal anarchy in the CPSA and some wholly misleading or garbled comments on pay negotiations.

CPSA and Liverpool councillors

2. Amongst other things, the Times reports that Militant are not only trying to use union funds to support the 47 surcharged and disqualified Liverpool councillors, but local branches have been asked to make donations to the councillors who have been asked to speak at Association meetings. We shall be telling departments that these people should not be allowed on departmental premises.

Pay

3. The article appears to confuse Treasury's discussions with the union on possible long term pay arrangements and those in progress with the unions in general on London Weighting. There is no question of a pay offer of 5.7% being made to the CPSA.

4. As for London Weighting, the Treasury made an open offer of 4.25% effective from 1st April and when this was rejected subsequently, proposed 5.7% effective from 1st July (with consequential changes in effective starting dates for future years). This was also rejected and no formal fresh offer has been made by the Official Side. There has been no further move by the unions either.



5. References to strikes also seem confused. We would not expect industrial action over London Weighting, whatever its outcome, nor over any failure to progress the long term pay talks. The Militant-dominated executive of the CPSA, however, have threatened all-out action in 1988 over that year's pay claim. All-out action nationally seems an unlikely eventuality.

6. This note has been agreed with Pay 1.



**D A TRUMAN**

IRD



# Whitehall union faces Militant's 'final push'

By Roland Rudd

Supporters of the Militant Tendency were yesterday accused of "making a final push" to take control of the Civil and Public Services Association, the largest of the Whitehall unions.

Mrs Marion Chambers, association president and a member of its minority National Moderate Group, said the Militant-dominated executive had attempted to run down publication of the official union journal because it was run by a moderate, and to prevent the union's general secretary, also a moderate, speaking to the press.

The executive is also accused of appointing Militant supporters to key positions and attempting to donate funds to the 47 Militant-led Liverpool councillors who have been surcharged and disqualified.

Mrs Chambers said: "The Militants are making a final push to take complete control.

In a letter sent by Martyn Jenkins, secretary of the Broad Left, the Militant-dominated group that runs the union, supporters have been told that if the present pay negotiations do not make early progress the membership will be balloted on industrial action that may result in an all-out strike.

Broad Left members attending the union's pay conference on December 3 have been asked to give between £10 and £20 of their overnight subsistence allowance as a political levy for the hard-left faction.

The National Moderate Group is against an all-out strike but fears that the Militants are spoiling for another fight with the Government.

It also fears that the levy is part of the Broad Left's campaign to finance Militant Tendency; the executive has been asked to give the 47 Liverpool councillors £900, but the attempt was stalled by Mrs Kate Losinska, veteran right-winger and union vice-president who insisted that the union take legal advice on such a payment.

However, the executive has passed a motion calling on local branches to make individual donations to the disqualified councillors who have been asked to speak at association meetings.

It has also attempted to pass a motion, which is in breach of a conference decision, to reduce publication of *Red Tape*, the union journal from once a fortnight to once a month.

A decision was put off until the next executive meeting after Mr Barry Reamsbottom, the journal's editor and a member of the minority moderate group, threatened to take legal advice.

Mr Reamsbottom, whose appointment as editor has to be ratified at next year's conference, said Mr John Macreadie, the union's deputy-general secretary and a supporter of Militant Tendency, threatened to have him removed for "partiality".

The Militant-controlled executive has taken the unprecedented move of publishing its own paper, *NEC News*, at a time when the union is suffering financial difficulties. Moderates believe that the union owes about £250,000; *NEC News* will cost CPSA members another £30,000 a year.

The Broad Left has denied trying to restrict publication of *Red Tape* for political reasons.

Whitehall fears that, whatever the outcome of the union in-fighting, the association could be heading for another damaging bout of industrial action.

The Treasury's original offer of a 5.7 per cent rise from July 1 instead of April 1 was rejected. The offer was then withdrawn in favour of 4.25 per cent offer from April 1 which the union considers to be "totally unacceptable".

Mr John Ellis, the general secretary, said its 78,000 members would be balloted next month with a recommendation to take industrial action if the Government did not revise its offer.



*Parsons  
P 22*

FROM: D A TRUMAN

DATE: 5 November 1987

PAYMASTER GENERAL

*Rang PS/PMG  
+ saw C had  
no comment. M.  
✓*

cc PPS

Sir Peter Middleton  
 Mr F E R Butler  
 Miss Mueller  
 Mr Kemp  
 Mr Luce  
 Mr Pettifer  
 Mr Flitton  
 Mr Faulkner

*pmp.*

**BALLOTS BY SOCIETY OF CIVIL AND PUBLIC SERVANTS (SCPS) AND CIVIL SERVICE UNION (CSU) TO ESTABLISH POLITICAL FUNDS**

You will wish to know that we have received requests from the SCPS and the CSU for facilities so that both unions may hold ballots of their membership about setting up political funds. As you know, both unions recently voted to merge from 1 January 1988. However, we understand that, on the advice of the Certification Officer, they have been told that if they wish the newly-formed union (National Union of Civil and Public Servants) to maintain a political fund from the outset they should secure majorities of their respective memberships in these ballots prior to merger.

2. In wishing to ballot now both unions are fulfilling earlier Conference decisions. There is no question at this stage of either union proceeding, were a political fund to be established, to engage in party political activities. Indeed, the SCPS have already given their members an undertaking to this effect and the CSU is also on record as eschewing such activities. And it seems evident from reports of previous Conference debates of both unions that, even on merger, there would be little enthusiasm amongst activists for a ballot on political affiliation; and I strongly suspect that the ordinary membership would react with considerable antipathy to any such proposal.

3. Although we dislike political funds for civil service unions, they regard them, rightly or wrongly, as an insurance policy against legal action by members over allegations of the wrongful use of general funds. In the circumstances, and because precedents have



already been set with the IRSF and CPSA, I propose to agree that both unions may be permitted the facilities they seek in order properly to conduct their ballots. The SCPS and CSU will receive neither more nor less facilities for these ballots than were accorded to the IRSF and CPSA.



D A TRUMAN





FROM: S P JUDGE  
DATE: 6 November 1987

MR TRUMAN

cc PPS

Sir Peter Middleton  
Mr F E R Butler  
Miss Mueller  
Mr Kemp  
Mr Luce  
Mr Pettifer  
Mr Flitton  
Mr Faulkner

**BALLOTS BY SOCIETY OF CIVIL AND PUBLIC SERVIVANTS (SCPS) AND  
CIVIL SERVICE UNION (CSU) TO ESTABLISH POLITICAL FUNDS**

The Paymaster General discussed your submission of 5 November with the Chancellor at Prayers this morning.

He is content with what you propose, but would like to write to his Ministerial colleagues to inform them of this decision. I would be grateful for an (early and short) draft.

S P JUDGE  
Private Secretary





PS / Chancellor

CPSA : ARTICLE BY THE  
INDEPENDENT.

The PMG has seen  
and agrees with  
Mr Truman's advice in  
his minute of today  
(copy attached), but  
he thought that the  
c/x should also be  
aware of this.

Debbie.

8/12.

OK, provided  
but  
from the  
who knows how  
to deal with the  
press.  
m.



AMG - 1007 - 6

1. MR KELLY

2. PAYMASTER GENERAL

I agree that on balance  
it probably would be  
helpful to use Mr Clement.  
provided that it is done  
unattributably.  
with  
care.

FROM: D A TRUMAN

DATE: 8 December 1987

cc Miss Mueller

Mr R I G Allen

Mr Gilhooly

Mr Pettifer

Mr Flitton

## CPSA: ARTICLE BY THE INDEPENDENT

IDT have been told by the Independent that they intend to run a story before or over the Christmas break on the CPSA's bid to affiliate to the Labour Party. Their industrial editor has asked that their reporter, Mr Barry Clement, should be given some background briefing both on this and more generally on the state of industrial relations in the Civil Service.

2. This is rather difficult. On the one hand if we give no background information, the article will have a much greater CPSA bias both on industrial relations generally and the political affiliation point. Indeed, the article could be quite unhelpful to us. On the other hand, although considerable care will be needed, there are some useful thoughts which could be fed in showing that the incidence of industrial action, even in a year of a major strike, is really very small given the size of the Civil Service as a whole. And as to political affiliation, we have done much background research which would enable us to highlight the traditions of political neutrality for both civil servants and their unions. Questions on the Government's intentions, of course, would have to be played with a very straight bat.

3. IDT believe that, on balance, the advantage lies in seeing the Independent and giving them the background briefing they seek. With some misgivings, I am inclined to share that view, but I should be glad to know whether the Paymaster General concurs. (We would insist, of course, that the Independent accepts the briefing will be unattributable and that there should be no reference to a Treasury viewpoint or individuals.)



D A TRUMAN



FROM: M H WHEATLEY  
DATE: 8 DECEMBER 1987

PS/PAYMASTER GENERAL

cc: Mr Kelly  
Mr R I G Allen  
Mr Gilhooly  
Mr Truman  
Mr Pettifer  
Mr Flitton

CPSA: ARTICLE BY THE INDEPENDENT

Miss Mueller agrees with Mr Truman's  
advice in his minute of today.

*MH*

M H Wheatley  
PS/Miss Mueller



*mmp*

FROM: MISS M P WALLACE

DATE: 9 December 1987

APS/PAYMASTER GENERAL

CPSA: ARTICLE BY THE INDEPENDENT

The Chancellor was grateful for a copy of Mr Truman's minute of 8 December. He agrees that the advantage lies in providing the Independent with background briefing, but he would be grateful if you could ensure that the briefing is given by someone who knows how to deal with the press.

*mpw.*

MOIRA WALLACE



FROM: D A TRUMAN

DATE: 15 December 1987

1. MR KELLY
2. PAYMASTER GENERAL

cc PPS  
Sir P Middleton  
Miss Mueller  
Mr Odling-Smee  
Mr Gilhooly  
Mr Pettifer

#### CPSA AND POLITICAL AFFILIATION

At your meeting with Mr Fowler on 19 November it was agreed that officials would jointly review the range of options which the Government might take in response to party political affiliation by a Civil Service union, and make recommendations on possible courses of action. Following that, the Law Officers' views should be sought on the risks of judicial review which might attend the various options. You would then meet Mr Fowler again to consider the position and put recommendations to colleagues.

2. We have held this paper back a couple of days because we knew there could be a significant development on the CPSA front. We now understand that as a result of a meeting of their NEC last week, Mr Ellis has been authorised to write to us giving the assurance we have been seeking that the CPSA will not use their political fund for party political purposes, so that - theoretically - agreement can be given to allow check-off of the political levy. However, such an assurance is unlikely to be entirely credible since - and this is probably the best we can expect at present - it also appears that a decision was taken to postpone the affiliation ballot scheduled for spring 1988 until after the NEC elections in May. If the political complexion of the NEC were to shift away from the left in the May 1988 elections, proposals for a ballot could be put off indefinitely; but if there is no major change, the matter would almost certainly be resurrected probably in just under a year's time.

3. In conjunction with officials in Department of Employment and with the Treasury Solicitor we have been reviewing the complete range of options which might be open. The attached paper, which has been agreed with the Department of Employment and Treasury Solicitor, discusses the various options and the question of timing, and recommends the particular options which we believe should be pursued with the Law Officers. As the paper makes clear none of the options identified offers an ideal solution, but some are clearly more viable and practicable than others and our recommendation is that those which hold out



most prospect of success, and which should therefore be put to the Law Officers, are the following:-

- place a statutory duty on Civil Service unions not to affiliate to a political party (Option C)
- withdraw recognition (either administratively or, if there is a real risk of judicial review) by legislation (Option D)
- suspend check-off (Option E)

In addition, carrying on with contingency preparations as above but taking no overt action (Option H) has now become a serious possibility in view of the latest developments.

4. As you will see, Option C envisages legislation, as does Option D if the Law Officers consider that withdrawal of recognition administratively would be likely to invite judicial review. The problems involved in taking a legislative route are highlighted in paragraph 22 of the attached paper. Whatever the CPSA's current plans for an affiliation ballot, it remains to be determined whether the opportunity should still be seized to take legislative action as an insurance policy for the future. There are arguments both ways. To legislate now via the Employment Bill (assuming problems of scope do not prove insuperable) could be seen as unnecessary, provocative and damaging to industrial relations, bearing in mind that it would apply to all non-industrial Civil Service unions, not just the CPSA. On the other hand, if the present opportunity is not taken and the affiliation spectre reappears the Government obviously could find itself handicapped if it wished to counter the move by legislative means. This question will have to be resolved soon if the option of using the Employment Bill is to remain open. But a final judgement can be postponed until we have advice from the Law Officers and thus a clearer idea of how viable the individual options actually are.

5. If you are content with the proposed line, we will write to the Treasury Solicitor with instructions to seek the advice of the Law Officers. We will invite their views on the ILO/ECHR dimension as well as the question of judicial review. You should also know that we were asked by Treasury Solicitor and legal advisers in D.Emp. and FCO to produce a rationale of public policy in this area for the Law Officers. They would use this to test the various responses which



the Government might make in the event of the CPSA pursuing political affiliation against the criteria of rationality under domestic law and proportionality under ECHR obligations. A copy is attached for information which incorporates advice from Treasury Solicitor. DE officials are putting up a similar submission and paper to Mr Fowler, whom it now seems unlikely that you will be in a position to see before Christmas, as originally suggested. But in the light of the recent developments on the CPSA front, this should not cause difficulty - though decisions about the way forward will have to be reached very early in the New Year if we are to use the Employment Bill.



D A TRUMAN

IRD



CPSA AND POLITICAL AFFILIATIONIntroduction

1. At the meeting between the Paymaster General and the Secretary of State for Employment on 19 November, Treasury and Department of Employment officials were asked to give further consideration to the options open to Ministers for responding to the possible affiliation to the Labour Party by the CPSA. This paper, which has been agreed in draft with DE officials, examines the options in the light of further comments from the legal advisers but it is clear that definitive legal advice is essential before final decisions can be reached. The paper also considers the problems of timing.

Option A: Legislation against individual civil servants

2. As in the 1927 Trades Disputes and Trade Unions Act, it could be made a condition in law that civil servants cannot belong to a union which had political funds or was affiliated to a political party.

3. Comment: An approach aimed at individuals would be broadly comparable with that adopted over the GCHQ ban with its connotations of human rights and individual freedom. It would be difficult if not impossible to police in the event of widespread disobedience by individual civil servants. Legislation would be highly contentious politically and would be in breach of obligations to ILO/ECHR. Given the very considerable difficulties and the conclusion already reached re Option B below it would not seem desirable or practicable to pursue this option.

Option B: Legislation against Civil Service unions

4. This was the course originally favoured by Treasury Ministers (Paymaster General's letter of 12 October to Mr Fowler refers). Legislation would provide for withdrawal of recognition, removal of immunities from actions in tort and removal of listing and certification of independence.

5. Comment: Such a course would be likely to result in a breach of certain of the UK's obligations to the ILO and ECHR (see Appendix). There are also fundamental policy objections. If immunity from actions in tort is lost as a result of affiliation the union is under no constraint to observe the provisions of existing legislation (eg secret ballots). But the impact would



not be immediate and would only occur when there was official industrial action. Consequently, the Paymaster General and Mr Fowler agreed at a meeting on 19 November that this course is unlikely to be worth pursuing.

**Option C: Legislation which placed a duty on Civil Service unions not to affiliate to a political party**

6. Legislation might be introduced which placed an obligation upon Civil Service unions representing non-industrial civil servants not to affiliate to a political party.

7. Comment: It would be for consideration whether it might be left unspecified who could invoke proceedings or, alternatively, laid down that this should be a union member or in the last resort the power could rest with the Attorney General. As to sanctions, the general thrust of current employment law is to rely on civil rather than criminal law remedies although criminal sanctions against trade union funds are not inconceivable. Sanctions could be fines for contempt of court and ultimately sequestration of union funds. There are possible ILO and ECHR objections and (as with other legislative options) potential problems of definition, eg what precisely is meant by "affiliation"; what is a "political party"; and how should the sort of trade union to be caught by the legislation be defined? The problem is whether these definitions can bite.

**Option D: Withdrawal of recognition**

8. Recognition could be withdrawn either by administrative act alone, or under powers granted by legislation. A concomitant of derecognition would be loss of check-off and facilities (see Options E and F).

9. Comment: At present there is reason to believe that withdrawal of recognition in either circumstance could result in a breach of the UK's obligations to ECHR and just possibly to ILO. Derecognition by administrative act alone could also run the risk of legal challenge by way of judicial review if the Government's action were seen to be irrational or if recognition were withdrawn without appropriate consultation. It might also be that withdrawal of recognition would be challenged on the ground of lack of proportionality. The position on judicial review remains to be considered by the Law Officers who might also be asked to consider the implications of withdrawal of recogni-



tion on the international front. Due weight needs to be given to the fact that derecognition would not be immutable and would continue only for as long as the union remained affiliated to a political party. It is also for consideration that CPSA represents staff in the "intermediate group", ie who are subject to varying degrees of political restriction.

10. An issue not to be lost sight of in derecognition is the fact that such action would be highly unpopular with departments, who would regard it as making the conduct of industrial relations with their largest and most troublesome group of staff exceedingly difficult while severely damaging the position of full time paid officials.

Option E: Suspension of check-off

11. Check-off could be suspended either totally or in respect just of the amount of the political fund levy. The latter is at present academic in the case of the CPSA because Treasury have not yet agreed that the levy may be collected via check-off. Suspension would be a concomitant of withdrawal of recognition because the facility is only provided for recognised trade unions. If recognition were not withdrawn, an appropriate process of consultation would have to take place with the union concerned, and the Civil Service Code and departmental handbooks would have to be amended, before check-off were actually suspended. This process would involve the CCSU as well as the union directly affected.

12. Comment: It is understood that, following the NEC meeting on 9-11 December, the CPSA intend to write giving an assurance that the union's political fund will not be used for party political purposes. This results from a decision not to hold an affiliation ballot in the spring of 1988. The intention to hold a ballot has not been dropped, but the CPSA have decided that the ballot must now be deferred until after the NEC election in May 1988. It seems likely that the ballot will be put off indefinitely if the political complexion of the union changes. But if it remains the same the ballot could well be held in, say, a year's time and the initial assurance from the CPSA thus may not provide a sufficiently strong guarantee. There is much to be said for playing this long until such time as they give a satisfactory assurance that their political fund will not be used for party political purposes. With little or no cash actually in the political fund the CPSA will almost certainly have to restrict any campaign for affiliation.



An appropriate amendment to the Code and departmental handbooks, either before or after any ballot, could foil the CPSA while they remain dependent on check-off; and if necessary check-off could be suspended in toto. The check-off weapon, however, will lose its effect should the union switch to direct debit for their subscriptions. Nonetheless, while a lesser sanction than some of the other options it would be a valuable gesture demonstrating the Government's views.

**Option F: Withdrawal of facilities under the National Facilities Agreement (NFA)**

13. The NFA is a National Whitley Agreement made with the Council of Civil Service Unions collectively, not with individual unions. Breaking the Agreement (unless the full 12 months notice were given) would affect all Civil Service unions. The mere threat of this would mean little to the membership of a union and would be unlikely to influence the vote against affiliation. It is however a possible means of retaliation after the ballot.

14. Comment: There are practical difficulties in taking this step, and it is not one which is likely to have much value in its own right either as a deterrent or as a response after the event. In any event, it would still be necessary to allow the minimum statutory protection for employees under the 1978 Employment Protection (Consolidation) Act. However, withdrawal of recognition (Option D) would automatically result in the union losing its entitlements under the National Agreement.

**Option G: Enlist support of CCSU and/or Opposition**

15. It has been suggested that the other CCSU unions and/or the Opposition should be approached to see if they would be prepared to try and persuade the CPSA to think again. However, this is very much an option of last resort and very little hope can be entertained that it would succeed.

**Option H: Government remains publicly uncommitted but prepares contingency measures**

16. If the ballot is postponed or abandoned, the Government could maintain a low profile but prepare contingency measures in case the affiliation question re-emerges.



17. Comment: This would keep the temperature down and deprive the union of the ability to score political points. The Government could meanwhile continue clarifying what options would be open to it should the CPSA decide to ballot. However, delay would probably result in the opportunity of using the Employment Bill being lost if the Government wished to pass legislation.

#### TIMING

18. In his letter of 12 October to Mr Fowler the Paymaster General made clear his view that a statement of the Government's intentions was appropriate now. However, timing is dependent on the option which is chosen especially if legislation is not pursued. Moreover, before a "statement of intent" is made public, Ministers will wish to be satisfied about that intention's viability. The timing question must also now be considered afresh in the light of the CPSA's decision, when confirmed, not to hold a ballot in the spring.

19. That said, timing is essentially a question of deciding whether any statement should be early and in anticipation that the CPSA will eventually ballot, or whether the Government should remain silent. The case for making a statement of intent before any ballot is held is that it might serve as a deterrent, clearly demonstrating to the CPSA and its membership that the Government meant business; as a consequence the ballot might be called off completely, or if the ballot still goes ahead members might be more readily disposed to vote against affiliation.

20. The argument for remaining silent is that if the CPSA should decide to drop the idea of a ballot the whole issue could be quietly put to bed, with little obvious damage done on either side. It is also possible that by making public its intentions the Government would antagonise rather than chasten the union and provoke it into proceeding with a ballot and the membership into voting in favour of affiliation out of spite or pique.

21. However, if recognition  
were to be withdrawn by administrative action (Option D) the union would have to be properly consulted before withdrawal. Similarly, an appropriate process of consultation (and an amendment to the Civil Service Code and staff handbooks) would have to precede suspension of check-off (Option E) if recognition were not withdrawn. If therefore the Government chose either of these



responses and wished them to take immediate effect in the event of the union holding a ballot and voting for affiliation, it would have to state its intention at a suitable point before the ballot. If on the other hand the Government's response encompassed legislation it is understood that there might be a reduced need for prior consultation; but there would remain practical difficulties as outlined in para 22 below.

22. There are only limited opportunities for passing legislation. If a legislative option is chosen, it appears unlikely that there will be any suitable vehicle this Session other than the Employment Bill. Assuming there are no problems of scope (which depends on the option selected), any new clause will need to be inserted either during the Report Stage early in February, or possibly at the Lords Committee Stage probably in March. In both cases action would have to be taken before it was clear whether any ballot was to be held, and might in the event prove unnecessary.

#### CONCLUSION

23. None of the options mentioned offers an ideal solution. Each has its drawbacks, though some are clearly less fraught with difficulty than others. In all the circumstances it would appear that Options A (Legislation against individual civil servants) and B (Legislation against Civil Service unions) are non-runners. Option F (Withdrawal of facilities) is theoretically feasible but in practice it would be difficult to invoke and would be unlikely to have much effect. Option G (seek support from CCSU and/or Opposition) is not seen as a serious possibility.

24. This therefore leaves Options C, D and E and H.

25. Option C (placing a duty in law on Civil Service unions not to affiliate) is worth further consideration but there are difficulties, as outlined in paras 7 and 22. Option D (withdrawal of recognition - for preference without legislation) should also be pursued further; although there are potential problems with ECHR and judicial review, if these can be overcome this Option has certain advantages. Derecognition by administrative action does seem to be the natural response of the ordinary employer and obviates the timing problem of the legislative route. Option E (suspension of check-off) is unquestionably the least problematical of the various Options. It would be implemented automatically if recognition were withdrawn. Used on its own it could prove effective in the short term. But it might be seen in



some quarters as a less than decisive counter on the part of the Government, and would only have effect for as long as the union remained dependent on check-off for its subscriptions. Option H (Government remains uncommitted but prepares contingency measures) has the advantage of keeping the temperature down and allowing the affiliation issue quietly to disappear if a ballot is abandoned. The Government could meanwhile clear the way for action in case a ballot were still to be held. But this would almost certainly remove the possibility of using the Employment Bill as a vehicle for any legislation and thus would compromise Options C and D.

26. It is recommended that, if Treasury Ministers agree, Options C, D, and E should be pursued further with the Law Officers. This does not prevent us using Option H if we so wish.



IMPLICATIONS OF OPTION B RE ILO AND ECHRILO

- (i) Withdrawal of recognition might be deemed to be an infringement of freedom of association in contravention of International Labour Convention (ILC) 87 (notably articles 2 and 3) and of ILC 151 article 9. Could also be argued that withdrawal of recognition amounted to an act of interference in the functioning of the union, contrary to article 5.2 of ILC 151, and that it was not consonant with promoting the full development of collective bargaining (articles 7 and 8 of 151).

However, DEm consider that while the risk of being found in breach cannot be ruled out, this is "perhaps not the likely outcome".

- (ii) Removal of immunity in tort would be likely to be held to be an interference with the functioning of the union in breach of ILC 151, article 5(2). There is also the possibility of breach of ILC 151, article 9 (freedom of association) and of the European Social Charter. Under the UN International Covenant on Economic, Social and Cultural Rights, breaches could be alleged of article 8(1)(c) and 8(1)(d), which deal respectively with the right of unions to function freely and the right to strike.

DEm advise that removal of immunity would be likely to be in breach of ILC 151 and of the European Social Charter.

- (iii) Removal of listing and certificate of independence would, DEm. advise, be likely to be found contrary to the right of freedom of association under ILC 87, article 2, and to the protection against acts of anti-union discrimination conferred by ILC 151, article 4.



ECHR

The Option B proposals would be likely to be challenged in Strasbourg. The outcome of an application to Strasbourg cannot be predicted with certainty, but the UK might well eventually be found to have violated Article 11 of the Human Rights Convention. Article 11 is concerned with the right to peaceful assembly and freedom of association and the right to form and to join trade unions for the protection of members interests. Article 11.2 is concerned with the proscription of restrictions on the exercise of such rights other than those which are laid down by law and are necessary in the interests of national security, public safety, prevention of disorder of crime, protection of health or morals or protection of rights and freedom of others. Moreover it is also provided that Article 11 does not prevent the imposition of lawful restrictions in the exercise of such rights by members, inter alia, of the administration of the state. T.Sol/FCO advise that one or more members of a union and/or the union itself might complain that the right to freedom of association had been violated if the union lost its certificate of independence and status as a recognised union.

However, notwithstanding the above, it appears that the application of Article 11 in the area of trade union law is far from clear.



## POLITICAL NEUTRALITY OF THE CIVIL SERVICE AND ITS UNIONS

**Summary of current policy**

It is in the national interest that the Civil Service should be able, and be seen to be able, to serve with impartiality the Government of the day of whatever political persuasion. It is of critical importance that both Ministers responsible for the policies and the public which has dealings with various parts of the Civil Service should have complete confidence in the political neutrality of the Service. (It is for this reason that rules exist which restrict the political freedom of most civil servants as individuals.)

2. If a non-industrial Civil Service union affiliates politically, this may well appear to be the collective wish of its members to be formally and publicly associated with one political party. The public at large may well be unable or unwilling to differentiate between the "Civil Service" as such on the one hand and the Civil Service unions on the other. The Government of the day will be concerned that the unions will attempt to use, in whatever way, their industrial power to change, oppose or promote policies in the interests of a particular party. The perception of the Government and the public of the Civil Service as a collective entity would change in that event and confidence in its ability to carry out its daily tasks with impartiality would be severely damaged, perhaps irreparably.

3. The attached note considers at greater length the public policy on the perceived need for political neutrality in the modern non-industrial Civil Service and its unions, a policy which was last voiced publicly by the then Minister of State, Mr Brooke, in the House of Commons on 7 February 1986:

"Union members should know also that the creation of such [political] funds will not be seen as in keeping with the political neutrality of a civil service that has to serve Governments of any political persuasion. Moreover, in the Government's view, political affiliation - a further but separate possible step - would run wholly counter to this need for political neutrality."



## POLITICAL NEUTRALITY IN THE CIVIL SERVICE AND ITS TRADE UNIONS

## Note by the Treasury

The need for an independent Civil Service, free from patronage and external pressures, available to serve the Government of the day has been recognised since the Northcote-Trevelyan Report of 1853. This said:

"The Government of the country could not be carried on without the aid of an efficient body of permanent officers, occupying a position duly subordinate to that of the Ministers who are directly responsible to the Crown and to Parliament, yet possessing sufficient independence, character, ability and experience to be able to advise, assist, and to some extent, influence, those who are from time to time set over them".

2. The question of political independence, both collectively and individually, emerged later in the 19th and early 20th centuries. For long there has been an established policy to differentiate between the rights of individual civil servants to belong to political parties and, to various degrees depending on their grades and jobs, to participate in party political activities, and the need for the Civil Service as a whole to be, and to be seen to be, politically neutral and ready to serve Governments of any colour. The Order in Council of 1910 stated that:

"Employees of the Civil Service should take no overt part in public political affairs".

The current Civil Service Pay and Conditions of Service Code which is promulgated under the authority of the Civil Service Order in Council 1982 (as amended) states the requirement to serve loyally successive governments of different political complexions in its paragraphs on political activities.

3. The 1949 Masterman Report (Committee on the Political Activities of Civil Servants, Cmd 7718) said:

"... that to preserve the attitude of detachment in all civil servants in whom its absence might adversely affect the public service is so important as to easily outweigh any hardship felt by individuals who are deprived of the freedom to propagate political views among their fellow citizens ..... Any weakening of the existing tradition of political impartiality would be the first step towards the creation of a political Civil Service."



The Armitage Report (1978 Committee on Political Activities of Civil Servants - Cmnd 7057) recommended liberalising some of the constraints on political activities by individual civil servants. Nonetheless, it proposed that only industrials and non-office grades (eg messengers, prison officers, cleaners and others) should be given political freedom and that even clerical staff should be required to obtain the permission of their department before taking part in national or local political activities. The report observed:

"One particular thread runs through nearly all the evidence received, whether from the Civil Service Department, the National Staff Side or those who wrote to the Committee: since the publication of the Masterman Report, the concept of the impartial loyalty of the Civil Service to Governments of different political complexions has been fully maintained. Over the last few years ....few have challenged its capacity to serve Governments of different political views impartially. ....civil servants are appointed and paid out of public funds to serve the duly elected Parliament and Government of the day loyally, whichever parliamentary party or combination of parties is in power. We have been conscious of the need to preserve both this reputation and this service and we are fully aware of the dangers of their forfeiture".

This doctrine of political neutrality was reiterated in 1985 in Sir Robert Armstrong's memorandum on the relationship between civil servants and Ministers and again in his revised version issued in December 1987:

"The British Civil Service is a non-political and professional career service subject to a code of rules and disciplines. Civil servants are required to serve the duly constituted Government of the day, of whatever political complexion. It is of the first importance that civil servants should conduct themselves in such a way as to deserve and retain the confidence of Ministers, and to be able to establish the same relationship with those whom they may be required to serve in some future Administration. That confidence is the indispensable foundation of a good relationship between Ministers and civil servants. The conduct of civil servants should at all times be such that Ministers and potential future Ministers can be sure that that confidence can be freely given, and that the Civil Service will at all times conscientiously fulfil its duties and obligations to, and impartially assist, advise and carry out the policies of, the duly constituted Government of the day."

4. In the first quarter of the 20th century, the Civil Service unions increased in size and numbers and those representing clerical staff increasingly associated themselves with, and indeed affiliated to, the Labour Party. In the aftermath of the 1926 General Strike, it appears that the Government decided to extend the principle that civil servants should be politically neutral to civil servants in their collective form. Thus in 1927, Parliament passed the Trades



Disputes Act which, amongst other things, prevented civil servants, whether non-industrial or industrial, from belonging to trade unions which had affiliated either to the TUC or to political parties. The Chancellor of the Exchequer, the then Mr Churchill, acknowledged that individual civil servants had a right as citizens to identify with particular political parties but said:

"We cannot allow the Civil Service of this country to be drawn into the party arena, because that would be fatal to the Civil Service .... If we are going to have party politics introduced into the Civil Service and organised action deliberately taken by civil servants, not to push their own particular interests but to sway national and political issues, then you will introduce that sort of poison that has discredited the Civil Service of some important countries.....".

5. In 1946, when the Trades Disputes Act was repealed, it was argued from the Government benches that individual civil servants might be of any political persuasion, but in their public capacity would carry out their duties loyally to the Government. The fact that their unions might have affiliated to a particular political party was not in those circumstances relevant. Nonetheless, the Masterman Report in 1949 acknowledged the difficulties if civil servants "above the line" ie excluding non-office grades, were instructed by their staff associations when acting as delegates to party political conferences to attack the general policy of the government. The 1965 edition of the handbook "Staff relations in the Civil Service", last reprinted in 1978 with an editor's note accepting that it was no longer up to date and would be revised in due course, stated that Civil Service staff associations might apply to the Chief Registrar of Friendly Societies for registration as trade unions and in an apparent acknowledgement of the legal position noted that:

"There is nothing to prevent Civil Service staff associations affiliating to the TUC or any political party".

However, despite the freedom granted to Civil Service trade unions, and although all affiliated sooner or later to the TUC, none representing non-industrial civil servants has done so to a political party. (The Post Office unions had affiliated to the Labour Party while the Post Office was still a government department. However, the general view of Post Office staff again according to Masterman, was that they mainly carried out manipulative duties or in the case of counter clerks business transactions with the public rather than the discretionary administration of regulations.) Nonetheless, there have been attempts in the CPSA to affiliate; in 1983 the membership voted against the proposal by a majority of 2 to 1. Thus,



despite their legal freedom to do so since 1946, the Civil Service unions have refrained from overt political alignment even though it has also been recognised, as the Armitage report acknowledged, that individual civil servants may and frequently do take a political stance when representing their members in a formal trade union capacity.

6. With the exception of the CPSA, the question of the political associations of Civil Service unions remained quiescent between 1946 and 1985. However, following the 1983 Green Paper "Trade Unions and Democracy", which made clear the Government's views on unions' political funds, the Trade Union Act 1984, inter alia, revised the definition of political objects for which political funds are required. In the light of this the Inland Revenue Staff Federation considered that it needed a political fund although it made it clear that it had no intention of affiliating to any political party. In response to that union's actions, the then Minister of State, Treasury, made clear the Government's views on the need for politically neutral Civil Service unions in a statement to the House of Commons on 7 February 1986. He said:

"Union members should know also that the creation of such [political] funds will not be seen as in keeping with the political neutrality of a civil service that has to serve Governments of any political persuasion. Moreover, in the Government's view, political affiliation - a further but separate possible step - would run wholly counter to this need for political neutrality."

This statement reflected the development in the Government's thinking in the light of what was perceived to be a fresh development in Civil Service unions' attitudes to alignment with a political party. The underlying reasons for this expression of the Government's views are set out in paras 7-10 below.

7. If a trade union contributes to the finances of a political party and thus has direct or indirect influence over that party's policies, its own actions towards its members and their employer may well be swayed by political and ideological interests. Instead of solely carrying out the Government's policies, civil servants could be under pressure to influence them. This may be unexceptional where there is legitimate disagreement between the unions and the Government over its policies and practices on Civil Service pay and conditions of employment. At such times, there will inevitably be tensions between civil servants' loyalties to their employer and to their unions. But it is another matter to create such tensions over the Government's wider policies - in its role



as Government rather than employer - because these do not coincide with the unions' own political beliefs and aspirations. Unions may give instructions to their members which are based on political views and it would not be necessary to go as far as to take strike action in order to attempt to obstruct the employer. Of course, in order to satisfy the "golden formula", an industrial dispute must relate wholly or mainly to one of the matters specified in TULRA. Nonetheless, the trigger for seeking industrial action may be political opposition to the Government's wider policies.

8. There are already signs of this even though no Civil Service union as yet enjoys formal political affiliation. For example, both the CPSA and the SCPS have made clear their opposition to the Government's social security reforms and only in part has this opposition been based on perceived problems for the staff in the departments in question. Considerable space has been given to this in union journals, in particular the Society's Opinion of July 1985 and CPSA's Red Tape of September 1985 which called for opposition to the policy. The CPSA has also opposed the Government's policy to monitor the ethnic origins of security claimants to the extent of exhorting its members to mount industrial action despite that policy's endorsement by the Equal Opportunities Commission and the fact that this does not impinge on the terms and conditions of the civil servants carrying out the work.

9. There are a number of grounds for concern if Civil Service non-industrial unions affiliate politically.

a. Under the Whitley arrangements, Civil Service unions claim to represent all the staff in the grades for which they have recognition, and are accepted by the employer as doing so whether or not such staff are members. Generally the Government (or departments as appropriate) may well negotiate with the unions on that basis, and certainly does so on national issues. In the circumstances, there is an inherent risk that the public might perceive a close identity between the Civil Service unions and the Civil Service as a collective entity.

b. If the Civil Service unions affiliate politically, this will appear to be the collective wish of their members to be associated publicly with a particular party - a different step from a decision by an individual civil servant to join a party in his or her private capacity. In turn, affiliation may also be perceived to be a derogation from civil



service neutrality, with a consequent loss of public and ministerial confidence in the capacity of the Civil Service to implement impartially the Government's policy. This would be a matter of grave concern. In those circumstances, it would be appropriate, as a matter of public policy, to take action to ensure that nothing should give rise to that perception.

c. This is a quite separate issue from an actual breach of civil service neutrality by individuals. To ensure that individuals carry out, and are seen to be carrying out, their duties properly, the Code makes provision for the circumstances in which individual civil servants may engage in political activity.

10. There are, of course, divisions between parts of the Civil Service. Representation by the various unions is not entirely clear cut. There are degrees of overlap and it would be over-simplistic to argue that, for example, the majority of clerical staff and their unions could be allowed to enjoy greater political freedom than at present while more senior civil servants and their unions could not. There is an inherent risk that the public's perception of the Civil Service is generalised and it may be that the public do not differentiate between those parts of the Civil Service carrying out executive functions and those less visible parts concerned with policies. The objectivity of the services it provides and of the assistance and advice which it gives may well be questioned.

11. At the heart of the issue are questions on the one hand of public perception and a long-standing public expectation, based on experience to date, of strict political neutrality in the Civil Service as a whole, and on the other the desire of some elements in union leadership groups to take, through affiliation, a formal and overt party political stance. The difficulty of reconciling these positions should be seen in a long-term perspective independent of the political balance at any given time. Political parties, in the context of affiliation, are distinct from the Parliamentary parties from which Governments are formed and even more distinct from Governments themselves; and conflicts of policy between party and Government can on occasion be observed. It is by no means evident that the affiliation of a Civil Service union to a party from which a Government was formed would necessarily be perceived by the public or Government members as any more suitable than its affiliation to a party linked at any given time to the Parliamentary opposition.



12. It is undeniable that there is a long established public policy that in the national interest the non-industrial Civil Service as an entity should be, and be seen to be, above party politics, and be manifestly able to serve whatever Government is in power, advising and carrying out its policies and functions with impartiality. It is also current public policy that those unions seeking to represent the non-industrial Civil Service should refrain from overt and formal political links which might not only present conflicts of interest between their members and the employer in areas outside civil service terms and conditions of employment, but because of their representative role would endanger the public image and reputation of the service for political impartiality and objectivity. So far this policy has been accepted by most Civil Service unions and, where it has been put to the test, the majority of union members.



*blf to pmp  
7*



FROM: S P JUDGE  
DATE: 15 December 1987

APS/CHANCELLOR

*spoke*

*NWJ ↓*

cc: PS/Sir P Middleton  
PS/Miss Mueller  
Mr C W Kelly  
Mr Gilhooly  
Mr Truman  
Mr Pettifer

**CPSA: FURTHER DEVELOPMENTS**

The Paymaster General thought the Chancellor might like to see the attached minute from Mr Truman.

2. The Paymaster wondered whether the check-off correspondence will be sufficiently protracted to be still open in May next year. Mr Truman thinks not, unless the CPSA are excessively tardy.

S P JUDGE  
Private Secretary



## MANAGEMENT IN CONFIDENCE

AM 14 DEC 1987

FROM: D A TRUMAN

DATE: 14 December 1987

MR KELLY

cc PS/PMG  
PS/Sir P Middleton  
PS/Miss Mueller  
Mr Gilhooly  
Mr Pettifer

## CPSA: FURTHER DEVELOPMENTS

Political affiliation

Apparently the CPSA have taken legal advice about the problems of campaigning for political affiliation without any money in their political fund. They understand that while such a campaign is not ruled out of court, they have to be very careful and advocacy would be on a very low profile basis. In the circumstances, and in particular given the exchanges of letters between John Ellis and myself in which I have been seeking assurances about the question of party political affiliation, it appears that the NEC have agreed that they have no alternative but to defer holding any ballot. John Ellis told me he will write to the Treasury giving us an assurance that the political fund will not be used for party political purposes. He recognises that given the union's policy, that this may be insufficient and that I will have to seek further assurances since we will not be keen to set up check-off arrangements only, as he put it - and I neither encouraged nor discouraged him in this - to withdraw them if a ballot subsequently goes in favour of affiliation. However, if the NEC changes hands in May, he believes the question of affiliation will go on the back burner indefinitely. If Militant retain control, however, the ballot will probably be held in say a year's time.

2. Comment: this is good news so far as it goes although much will depend on the terms of the letter. It causes a complication in that any action would almost certainly have to be of a contingent variety.



1988 Pay

3. Mr Ellis confirmed the press reports about the uproar over the non-appointment of Mr Roddy as National Organiser. As a result, the Executive refused to endorse the pay claim following the recent Pay Conference since they want to use this as an excuse for holding another meeting in January in which the main topic will be the appointment (or not) of Mr Roddy. In short they put their own interests before that of the membership. Privately, Mr Ellis is determined to seek an IRSF/IPCS type deal but believes there is no chance of making progress before the May NEC Elections. Any proposed flexible pay deal if taken to conference would be "rubbished" and they would get no further forward. Although there would be a row and some industrial action, Mr Ellis hinted that he would not be unduly concerned if a relatively modest pay deal were imposed at the beginning of April provided he then had the opportunity to negotiate an IRSF type deal effective from next September or October with a further instalment in 1989. He certainly wishes to enter negotiations with you (together with his research officer) and exclude Mr Macreadie as soon as this proves feasible.

YTS

4. Mr Ellis regarded the recent industrial action in the Department of Employment as being of relatively little consequence - it was a one day strike as he put it - but recognises he is not yet out of the woods and wishes to have a further meeting with Mr Luce to discuss the problems here.

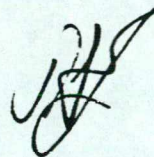
General

5. Mr Ellis, of course, is ground between the employer on one hand and his hard left NEC on the other. The real questions are whether he can outsmart the NEC and deliver his membership. The former should not be underestimated even though they spend much



MANAGEMENT IN CONFIDENCE

of their time politicking. But it is true, as Mr Ellis put it, that the Militants think solely in terms of strike action - they are rather like the Japanese Kamikaze pilots in World War II who seem to glory in self-destruction. The one thing in favour of the moderates is that the Militants do not recognise that Civil Servants in particular (and most of the British workforce in general) are not hell bent on striking at every opportunity. Nonetheless, I have some sympathy with Mr Ellis's views about the difficulties of running a union and conducting reasonable industrial relations with us as the activists' main interest appears to be looking for opportunities to start strikes.



D A TRUMAN



CONFIDENTIAL

FROM: C W KELLY

DATE: 16 December 1987

PAYMASTER GENERAL

cc: PPS  
Sir P Middleton  
Miss Mueller  
Mr Odling-Smee  
Mr Gilhooly  
Mr Truman  
Mr Pettifer

**CPSA AND POLITICAL AFFILIATION**

Mr Truman's minute below covers the further analysis of the options open to us in the event of CPSA affiliation to the Labour Party which you commissioned at your meeting with Mr Fowler on 19 November.

2. The more we look at this the more the options available to us seem to be getting narrowed down.

3. You ruled out the option of taking action against individuals at a fairly early stage, for fairly obvious reasons. As I understand it, you have also reluctantly agreed with Mr Fowler that the option of legislating to remove immunities from actions in tort and to remove listing and certification of independents had also to be dropped because of complications with the European Code of Human Rights and our obligations to the ILO.

4. The lawyers now seem to be telling us that there are similar ECHR difficulties with the other front runner, withdrawal of recognition. If this view is confirmed, it has important implications. It is one which, speaking as a layman, I find very surprising. The proposal, which I endorsed, is that the law officers advice should be specifically sought about this.

5. If that advice supports the current view, we are effectively left with only two other worthwhile options, both of which have their own difficulties:



C O N F I D E N T I A L

- (a) Suspension of check-off. We have not yet agreed to check-off for the political fund and ought in my view to continue not to do so for as long as the CPSA executive policy remains in favour of affiliation. The question is whether we should go further and withdraw check-off entirely for the "normal" union subscription as well if the CPSA persist with their policy. In the short-term this could be quite a substantial sanction.
- (b) A new idea, placing a legal duty in law on Civil Service unions not to affiliate, with the implication that financial sanctions could be imposed if this duty was ignored. In one sense this is the most direct approach. But it could involve some difficult problems of definition and, yet again, there could be problems with the ECHR.

6. The next step is to consult the Law Officers, particularly on the ILO/ECHR dimension. If you agree, we will arrange to do this straight away through the Treasury Solicitor. You may wish simultaneously to discuss the present position with us, particularly in the light of the news - if it could be relied upon - that the CPSA executive take the view that they will have to postpone the affiliation ballot at least until after the NEC elections in May. (Mr Ellis' letter just received is a little ambivalent on this point).



C W KELLY





FROM: S P JUDGE

DATE: 21 December 1987

APS/CHANCELLOR

cc Sir P Middleton  
Miss Mueller  
Mr Odling-Smee  
Mr C W Kelly  
Mr Gilhooly  
Mr Truman  
Mr Pettifer

*Ch/ content for PMG to proceed?*  
*Yps, see the Law Officers*  
*SW also asks for a meeting / advice on options A, B, C, D, E*  
*Where has been the 1927 Act published?*

**CPSA AND POLITICAL AFFILIATION**

The Paymaster General has seen Mr Kelly's submission of 16 December, covering Mr Truman's of 15 December, which:

- identify 8 options for Government action;
- explain why the option originally preferred by the Chancellor and the Paymaster in the Paymaster's letter of 12 October to Mr Fowler (legislating to remove immunity from tort actions etc. - Option B) is no longer feasible; and
- suggest that the Law Officers' advice is sought on 3 other options (C, D and E).

2. Subject to the Chancellor's views, the Paymaster is content which this advice, and for the Treasury Solicitor to consult the Law Officers as soon as possible. He also plans to have a meeting with officials in the week beginning January 5.

S P JUDGE  
Private Secretary



CONFIDENTIAL



FROM: J M G TAYLOR

DATE: 24 December 1987

PS/PAYMASTER GENERAL

cc Sir P Middleton  
Miss Mueller  
Mr Odling-Smee  
Mr C W Kelly  
Mr Gilhooly  
Mr Truman  
Mr Pettifer

**CPSA AND POLITICAL AFFILIATION**

The Chancellor has seen your minute of 21 December.

2. He is content for the Paymaster to proceed as proposed. He has commented, however, that the Law Officers should also be asked for a ruling/advice on option A, where we have the 1927 Act precedent.

A handwritten signature in black ink, appearing to be "J M G TAYLOR".

J M G TAYLOR



CONFIDENTIAL



FROM: ROSIE CHADWICK  
DATE: 12 January 1988

bf 18/11 20/11  
Pmy

MR TRUMAN

cc APS/Chancellor  
Sir Peter Middleton  
Dame Anne Mueller  
Mr Odling-Smee  
Mr C W Kelly  
Mr Gilhooly  
Mr Pettifer  
Mr Tyrie  
Mr Court - OMCS  
Mr Muttukumar - T.Sol

#### CPSA AND POLITICAL AFFILIATION

The Paymaster General was grateful for the discussion on 7 January with Dame Anne Mueller, Mr Kelly, Mr Pettifer, Mr Tyrie, Mr Court (OMCS), Mr Muttukumar (T.Sol) and you.

Papers: your minute of 15 December, with the paper by Treasury and Department of Employment officials; Mr Kelly's of 16 December; and Mr Taylor's of 24 December.

2. The Law Officers are expected to advise on options C, D and E (paragraphs 6-12 of the joint paper) on or before Friday, 15 January. The Paymaster said he would want an early meeting once this advice had been received. Advice on option A (paragraphs 2-3) may take longer because the Law Officers have asked for comments from the legal departments of DEm and FCO. Pending this advice, the Paymaster was brought up-to-date on the CPSA position and a number of contingencies were discussed.

#### CPSA position

3. The General Secretary has said that he believes a ballot on political affiliation will not now be held before autumn 1988, and may be postponed indefinitely depending on the outcome of the Executive elections in May. A final decision has yet to be taken, however, and it is expected that the matter will be discussed by the Executive later in January or early February.



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4. Meanwhile the CPSA have given a written undertaking not to use their political fund for party political purposes "until and unless" their members decide by ballot that the union should affiliate to the Labour Party. This assurance is not regarded as sufficient and it is intended that the CPSA should be so advised. The delay in granting check-off is partly attributable to the fact that the CPSA's proposed method of collecting the political levy does not fully accord with the relevant provisions in the Code. One or two technical points have still to be resolved.

5. Mr Muttukumar said that on the basis of the limited information available to him, there could be a risk of a judicial review finding against the Government if it were held that check-off facilities had been withheld unreasonably. At present there is no indication that the CPSA will seek to challenge the withholding of check-off via judicial review. If they were to do so it would be necessary to amend the Pay & Conditions of Service Code (assuming an amendment had not already been put in train) after appropriate consultation with the CCSU.

6. Present indications are that the case for withdrawal of recognition by administrative act is stronger in terms of domestic law than previously supposed. If, however, a legislative route was decided upon, the Department of Employment was likely to agree to support emergency legislation if the CPSA did mount an affiliation campaign, in preference to the insertion of a clause or clauses in the Employment Bill presently before the House. The Paymaster attached importance to securing such agreement in advance. The scope for inserting the necessary legislation in the Employment Bill has not yet been established beyond doubt. Department of Employment lawyers have been asked to advise on this.

Rosie Chadwick.

ROSIE CHADWICK  
Assistant Private Secretary





FROM: ROSIE CHADWICK  
DATE: 28 January 1988

*Romp*

MR TRUMAN

cc APS/Chancellor  
Sir Peter Middleton  
Dame Anne Mueller  
Mr Odling-Smee  
Mr C W Kelly  
Mr Gilhooly  
Mr Pettifer  
Mr Court - OMCS  
Miss Haydon - OMCS  
Mr Tyrrie  
Mr Muttukumaru - T.Sol

**CPSA AND POLITICAL ADDILIATION**

I attach a note of the meeting of 22 January which supersedes the earlier version. I should be grateful if, to avoid confusion, you would destroy version 1.

REC.

ROSIE CHADWICK  
Assistant Private Secretary



CONFIDENTIAL



FROM: ROSIE CHADWICK  
DATE: 25 January 1988

MR TRUMAN

cc APS/Chancellor  
Sir Peter Middleton  
Dame Anne Mueller  
Mr Odling-Smee  
Mr C W Kelly  
Mr Gilhooly  
Mr Pettifer  
Mr Court - OMCS  
Miss Haydon - OMCS  
Mr Tyrie  
Mr Muttukumaru - T.Sol

**CPSA AND POLITICAL AFFILIATION**

The Paymaster General had a meeting on Friday with Dame Anne Mueller, Mr Kelly, Mr Pettifer, Miss Haydon (OMCS), Mr Muttukumaru (T.Sol) and you which:

- considered the implications of the CSD staff handbook;
- reported on developments within the CPSA; and
- reassessed the options open to Government in the light of the Law Officers' advice.

Papers: Mr Muttukumaru (18 and 21 January) covering Ms Wilmshurst (15 and 20 January) and your minutes of 8 and 21 January.

Handbook - "Staff Relations in the Civil Service"

2. This booklet, referred to in the advice from the Law Officers, is not in fact an MPO publication. It was first published in 1949; its most recent edition dates from 1965; and for some time it has been issued with the proviso that "developments in Civil Service staff relations since 1949 will be dealt with in a revised edition at some future date". Its statement on political affiliation could be said to have been superseded by later Ministerial statements, and formal withdrawal or replacement is not advisable.

CPSA position

3. Mr Kinnock seems ambivalent about affiliation by the CPSA to the Labour Party, and has urged delay until 1989 on the grounds



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that any campaign will need to be long and thorough. This advice, together with the continuing suspension of check-off, make a ballot on affiliation this year look extremely unlikely.

Options

4. As a result of the Law Officers' advice, two options look less promising:

Option A: (legislation against individual civil servants) is regarded as a non-starter (for reasons set out in your minute of 21 January).

Option D: (withdrawal of recognition) is thought susceptible to a successful challenge under judicial review, if effected by administrative act. Withdrawal by legislation, whilst acceptable domestically, would probably fall foul of the ECHR and defeat could have wider implications. The risk, as defined by the Law Officers, is significant, which is thought to mean c70:30 against. Court action could be triggered by enactment. It could take 2-5 years for the case to run its course through the European Court.

5. This leaves Option C (legislation which places a duty on Civil Service unions not to affiliate to a political party) and Option E (suspension of check-off).

6. On Option C the Treasury are clarifying the ILO position with the Department of Employment and the Law Officers. The preference is for postponing any legislation until after a ballot has been held. The Paymaster General repeated his desire to secure Mr Fowler's support for such legislation, should it become necessary.

Suspension of check-off

7. There were strong policy arguments for continuing to defer giving agreement to check-off for the political fund subscription for as long as an affiliation ballot remained firmly on the CPSA agenda. Assuming that the CPSA could demonstrate an ability to comply with the administrative provisions of the Code, however,



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refusal would not be legally defensible. As a matter of policy, it might be better to contest the case, risk losing it and then seek to amend the Code to ensure that funds were not used for the party political purpose of campaigning for affiliation. But the only legally safe course would be to amend the Code beforehand after a proper process of consultation. One problem is to define the conditions under which check-off would be granted, or continued, so as to cover the CPSA position without having an adverse effect on other unions. One possibility, which you agreed to look into in conjunction with the Treasury Solicitor, is a statement that all check-off would be suspended on commencement of an affiliation campaign by a particular union.

Timetable

8. The CPSA are not expected to respond to your latest request for reassurance until mid-February. Meanwhile:

- You will look more closely at exactly what assurance can be required of the CPSA (see paragraph 7 above). (The aim is to have done this by early next week.)
- The Law Officers will be asked to advise on the ILO aspects of Option C.

The Paymaster General will then be in a position to put a 'package' to Mr Fowler.

REC

ROSIE CHADWICK  
Assistant Private Secretary



*papers pte m*

FROM: D A TRUMAN  
DATE: 4 February 1988

- 1. MR KELLY
- 2. PAYMASTER GENERAL



*I have, with John  
on A's advice. For  
on the basis of his  
opinion and records  
here, Option C looks  
No look bet. X is  
of interest in this  
context. m*

- cc PS/Chancellor
- Sir Peter Middleton
- Dame Anne Mueller
- Mr Odling-Smee
- Mr Gilhooly
- Mr Tyrie
- Mr Court OMCS

CPSA AND POLITICAL AFFILIATION

Further to my minute of 21 January and your meeting the next day, we have now received the advice of the Department of Employment and the Attorney General on Option C (legislation placing a duty on Civil Service unions not to affiliate to a political party). The gist of this advice is that such legislation would probably be regarded by the ILO supervisory bodies as being in breach of Article 3 of Convention No 87 and Article 5 of Convention No 151, but the Attorney is rather more optimistic about the outcome than is the DE. The Attorney has also considered the implications of our obligations under the International Covenant on Economic, Cultural and Social Rights (ICECSR) and the International Covenant on Civil and Political Rights (ICCPR) and has concluded that these do not differ significantly from those under the ECHR. You will recall that he thought our chances there were better with Option C than with withdrawal of recognition.

2. In the meantime we have asked the DE whether other countries have ignored ILO conventions in legislating against affiliation by their civil service unions. The DE are unsure of such legislation although it appears that Article 441 of the Code de Travail carries the implication that it would be unlawful for a French trade union to affiliate to a political party. They have said that to confirm this it would probably be necessary to seek further advice possibly from a French lawyer both on this and the constitutional situation of the main French political parties. We are pressing DE to look at this again.

3. It appears that we are left with no legislative countermeasures which are likely to be wholly free of actual or potential problems with the ILO or ECHR although the Attorney implies that Option C may still be a possibility, the ILO notwithstanding. (The DE, however, will probably argue to the contrary.) This suggests that it is probably no longer realistic to contemplate using the Employment Bill as a possible vehicle - Mr Fowler is unenthusiastic

X



about the Bill being used and he will presumably be all the more so if there is a risk that an amendment aimed against affiliation will breach our international obligations, particularly those for which his own department has domestic responsibility. (However, if the Bill is to be used, time is short - the report stage starts on 8 February, the Second Reading in the Lords could be as early as 22 February and the committee stage between 8 and 10 March.) Free-standing legislation appears to be an alternative, if pressure of other business and the international dimension were not thought to be insuperable hurdles, possibly early in the 1988-89 session as a contingency measure or, given that the CPSA is likely to defer any ballot until some time in late 1989, as the need arises.

4. We are still left with check-off and we have to consider the following possibilities:-

(a) The CPSA give an unequivocal assurance that they have no present intention of holding an affiliation ballot, and confirm that they are able to comply with the understandings reached with other unions on check-off.

(b) The union give an assurance to the effect that they have no present intention of holding an affiliation ballot but that they will or may ballot at a future date.

(c) The CPSA say they definitely intend holding a ballot at a prescribed date.

5. (a) seems unlikely this side of the NEC elections, but if we were to be given such an assurance we would have no reason to refuse check-off of the political levy. (c) is almost as improbable, because the CPSA think that an overt commitment of this kind will be calculated to ensure that check-off continues to be withheld. (b) represents the most likely response and it is probable that Mr Ellis will write in this vein within the next fortnight.

6. In the event that the CPSA reply in terms of either (b) or (c) it will be necessary for us to think very seriously about moving to amend the Code. With that in view we have sought and received the Treasury Solicitor's preliminary advice on how the present rules might be amended to ensure that we do not run the risk of legal challenge. Ideally, what we require is a



provision which allows us flexibility to suspend check-off, in whole or in part, not only in the event of affiliation but also at an earlier stage, that is when a union fails to give a satisfactory assurance that it does not intend to embark on a campaign or ballot in favour of party political affiliation. (Because of problems of definition we believe that it would be very difficult to draft for withdrawal once a union embarks on a campaign for party affiliation. We have also taken the view that we could not easily withdraw check-off in the event that a union spent monies from its political fund on the political objects defined in S17 of the Trade Union Act 1984. This is because we would not be in a strong position if we attempted to deter a union from spending its political fund on the only purposes for which the Government has conceded this is necessary.) We have also been advised that we cannot legally withhold check-off pending a change in the Code (unless possibly we had some sound technical points to clarify, and we have now run out of those).

7. Assuming that you would prefer to keep the legislative option in abeyance, you will need to consider the timing of any Code change. We could take steps as soon as an appropriate Code formulation can be found and there are powerful political considerations for demonstrating the Government's concern and its intention not to stand on the sidelines. Any such change, of course, will upset the all the Civil Service unions even though they will not be affected directly since they will (presumably) argue that this is an attempt to interfere with their internal processes. We should not necessarily be concerned about this since the unions are bound to object to all changes perceived as being inimical to their interests. However, colleagues who will be negotiating the 1988 pay round, particularly with the CPSA and NUCPS see advantage in not giving further ammunition to the militant activists at a critical stage in the pay campaign - particularly since in March/April the CPSA is likely to be seeking an all-out strike. They would prefer such a change to be made later in the year. Further, even if the CPSA give us a reasonable assurance (as in para 4(b)) and it is agreed that we should concede check-off in, say, March, it is unlikely that the check-off arrangements will operate before the end of April or even May, ie after the NEC elections. These may produce a change in control.

8. On procedures, we would need to take advice from the lawyers but presumably would follow much the same consultative process as we did last year which culminated in an amendment to the rules to provide for suspension of check-




off in the event of industrial action. Departments would have to embark on simultaneous consultations with their unions in order to secure changes to departmental handbooks. Any change would take about 2 to 3 months to implement.

9. You will wish to consider whether you

(a) wish to press for an amendment to the Employment Bill or keep the legislative option in reserve - the latter looks the least controversial option and gives more time for the lawyers - if that is thought desirable - to reconsider the international problems;

(b) want the Code amended in the way proposed and the timing. Although there are strong industrial relations arguments for holding back until the early summer, these may well be balanced by the political desirability of being seen to take action soon.

10. You will wish to write to Mr Fowler (and those colleagues whom you first alerted to this problem). Depending on your assessment of the desirable options, it is possible that Mr Fowler will feel that in the circumstances a meeting is unnecessary. I will submit a draft letter to send to Mr Fowler in the light of the discussion on 8 February.



D A TRUMAN



*FW Prayers on Wednesday*

FROM: D A TRUMAN  
DATE: 5 February 1988

PAYMASTER GENERAL

cc PS/Chancellor  
Sir P Middleton  
Dame Anne Mueller  
Mr Kelly  
Mr Odling-Smee  
Mr Tyrie  
  
Mr Court OMCS  
Mr Muttukumaru T.Sol.

*my*

CPSA AND POLITICAL AFFILIATION

At your meeting this morning, you said that you wished to meet the Secretary of State for Employment as soon as possible next week to discuss the options and tactics. I attach, as requested, a short draft letter to Mr Fowler.

D A TRUMAN

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Has PMG been keeping you in touch with developments? Chris Kelly tells me that most of the 'tough' options are looking legally difficult, & unless we are willing to take some legal risks we may end up with a not a mere response.



**DRAFT LETTER FOR THE PAYMASTER GENERAL TO SEND TO:-**

The Rt Hon Norman Fowler, MP  
Secretary of State  
Department of Employment  
Caxton House  
Tothill Street  
London SW1H 9NF

**CPSA AND POLITICAL AFFILIATION**

You will recall that we met on 19 November last to discuss the action the Government might take in response to possible party political affiliation by the CPSA or any other Civil Service union. At that meeting it was agreed that our officials should jointly review the range of options and make recommendations on possible courses of action, and that the views of the Law Officers should be sought on the legal implications both international and domestic (not least the attendant risks of judicial review).

My officials have been in close touch with yours and we now have the views of the Law Officers. I would welcome the opportunity of a very early meeting to discuss the situation we appear to have reached and the action which should now be taken. In particular I would like to consider with you the legislative options and their timing and the possible alternative of using the check-off mechanism. Of course it had been our aim to meet before Christmas, but I am afraid that because of the legal complexities in particular, it did not prove possible to complete our deliberations within that timescale. My private office will be in touch with yours to arrange a mutually convenient date.

**PETER BROOKE**



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Mr Truman

ps/ch/lex.  
Sir P Middleton  
Dame Anne Mueller  
Mr Kelly  
Mr Odling-Smee  
Mr Tyne

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Norman Fowler MP  
Secretary of State  
Department of Employment  
Caxton House  
Tothill Street  
LONDON SW1H 9NF

Mr Carr OMCS  
Mr Nattukumar - T-50

8 February 1988

Dear Norman,

**CPSA AND POLITICAL AFFILIATION**

You will recall that we met on 19 November last to discuss the action the Government might take in response to possible party political affiliation by the CPSA or any other Civil Service union. At that meeting it was agreed that our officials should jointly review the range of options and make recommendations on possible courses of action, and that the views of the Law Officers should be sought on the legal implications both international and domestic (not least the attendant risks of judicial review).

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*Lumsden*

*Pm*

**PETER BROOKE**

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